United States Court of Appeals

for the Second Circuit

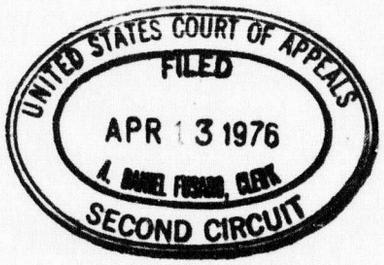
APPELLANT'S APPENDIX

court copy

76-7082

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT



Docket No. 76-7082

B p/s

MUNTERS CORPORATION,

Plaintiff-Appellee,

-against-

BURGESS INDUSTRIES, INC.,

Defendant-Appellee,

and

BUFFALO FORGE COMPANY,

Defendant-Appellant.

APPEAL FROM PRELIMINARY INJUNCTION OF
THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX TO APPELLANT'S BRIEF

BURNS, VAN KIRK, GREENE & KAFER
521 Fifth Avenue
New York, New York 10017

Attorneys for Defendant-Appellant

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CIVIL DOCKET

UNITED STATES DISTRICT COURT

JUDGE HENRY

Jury demand date:

C. Form No. 106 Rev.

TITLE OF CASE

208-1 75-4622 09-19-75 3 410 1

MUNTERS CORPORATION

-vs-

BURGESS INDUSTRIES INCORPORATED
BUFFALO FORGE COMPANY

ATTORNEYS

0844 RG

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(Burgess Ind. Incorp)

Burns, Van Kirk, Greene & Kafer
521 Fifth Ave, NY, NY 10017 972-0500
(Buffalo Forge Company)

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed X	Clerk	SEP 19 1975		57963		
J.S. 6 mailed	Marshal					
Basis of Action: Declaratory judgment under Antitrust laws 15 U.S.C. 1,2 28 U.S.C. 2201.	Docket fee					
	Witness fees					
Action arose at:	Depositions					
		0 01				

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DATE	PROCEEDINGS	Date Ord Judgment
09-19-75	(1) Filed complaint and issued summons.	
10-03-75	(2) Filed summons & entered marshal's return, served on: Buffalo Forge Co. by J.Popp 9-24-75 Corp. Trust Co. by V. Colvell 9-24-75.	
10-30-75	(3) Filed Stip&Order adjourning deft.Buffalo Forge Co.to answer complaint to 12/22/75.Tenney,J	
11-14-75	(4) Filed deft.Burgess Industries Incorp.Affdvt&Notice of motion for Preliminary Injunction&supporting memorandum ret.11/25/75.	
11-14-75	(5) Filed Memorandum in support of Deft.Burgess Industries motion for preliminary Injunction.	
11-05-75	(6) Filed Deft.Burgess Industries Incorporated notice of appearance by attys.	
11-14-75	(7) Filed ANSWER of Deft.Burgess Ind.Incorp. to complaint.	MFPE&I
11-13-75	(8) Filed Deft.Buffalo Forge Co.Notice of appearance by attys.	
11-20-75	(9) Filed Ex parte Order.Hearing on motion for Preliminary injunction of deft. Burgess Industries Incorp. from 11/25/75 adjourned to 12/10/75.Tenney,J(mn)	
11-20-75	(10) Filed Deft.Buffalo Forge Co. Notice to take deposition with request to produce documents of deft.Burgess Ind.Incorp.	
11-25-75	(11) Filed Pltff's Memorandum in reply to deft.Burgess Industeies motion for preliminary injunction.	
11-28-75	12 Filed Deft.Buffalo Forge Co.to Pltff.	
12-17-75	13 Filed " " " " Memorandum in opposition to Deft.Burgess Industries motion for preliminary Injunction.	
12-17-75	14 Filed Affdvt of Robert Jorgensen for Deft.Buffalo Forge Co.	
12-17-75	15 Filed Ronald L.Pokorski " " " " "	
12-17-75	16 Filed ANSWER of Deft.Buffalo Forge Company	
12-18-75	17 Filed Oral Deposition of Lee Capps 12/9/75.	
12-18-75	18 Filed " " " Ronald J.Yaeger,Vol,II	
12-18-75	19 Filed " " " " " "	
12-24-75	20 Filed Pltff's answer to deft.Buffalo Forge's interrogs.	
01-19-76	21 Filed OPINION#43747. An injunction will issue pendente lite upon postin of a bond in sum of $25,000. by deft Burgess Industries Incorporated to secure payment of such costs add damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined. SUBMIT ORDER in conformity herewith.Tenney,J(mn)	
01-19-76	22 Filed OPINION#43747.An injunction will issue pendente lite upon posting of a bond in sum of $25,000 by deft.Burgess Industries Incopporated, to secure payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined.SUBMIT ORDER IN CONFORMITY HEREWITH.Tenney,J(mn)	
01-26-76	23 Filed Deft.Burgess Industries Incorporated Order and Preliminary Injuhction. Ordered that pltff ,etc.including Deft.Buffalo Forge Company are enjoined pendente lite from refusing to seal Hunters Media,on basis of sublicense agreement entered between Members Corp&Buffalo Forge Co.&extracting a written commitment from Burgess Ind.Incorp.as condition of sale,etc.Ordered that injunction pendente lite provided by this Order will issue upon posting of a bond in sum of $25,000 by deft.Burgess Industries Incorporated to secure payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined.Tenney,J	
01-26-76	24 Filed Deft.Burgess Industries Incorp.Bond Undertaking in sum of $25,000. (Insurance Co.of North America)	
02-17-76	25 Filed Suppl.Memorandum in support of Deft.Burgess Industries motion for preliminary injunction.	
02-17-76	26 FiledStip&Order adjourning hearing on deft.Burgess Industries Incorporated's motion for preliminary injunction to 12/16/75.Tenney,J.	
02-17-76	27 Filed Stip&Order adjourning hearing on deft.Burgess Ind.Inc.to 12/18/75.Tenney,J.	

(contd pg.3)

DATE	PROCEEDINGS
02-18-76	Filed Deft.Buffalo Forge Company Notice of Appeal from preliminary injunction entered on 1/26/76(mailed copy to Morgan,Finnegan,Pine,Foley&Lee &Curtis, Morris&Safford on 2/19/76)
03-01-76	Filed Memorandum of pltff Munters in response to Order to Show Cause to Burgess Industries brought by deft.Buffalo Forge.
03-01-76	Filed ORDER, adjourning ex-parte application filed by Deft.Burgess Industries Incorp.&order to show cause from 3/2/76 to 3/9/76.Tenney,J(mn)
03-08-76	Filed Reply by deft.Burgess Industries Incorp.to order of 2/25/76 to Show Cause requested by Deft.Buffalo Forge Company.
03-16-76	Filed Deft.Burgess Industries Incorporated Notice of motion for leave to amend Answer;amended answer,counterclaim and cross-claim .
03-19-76	Filed Pltff's affdvt in opposition to deft.Burgess Ind.motion under Rule 15 FRCP for leave to amend its answer.
03-19-76	Filed Pltff's Memorandum in opposition to deft." " motion under " " FRCP for leave to amend its answer.
03-12-76	Filed Pltffs notice to take deposition of deft.Buffalo Forge Company.
03-22-76	Before Tenney,J.with non-jury
03-22-76	Trial begun
03-23-76	" contd and concluded.Decision reserved.
03-24-76	Filed Deft.Buffalo Forge Company affdvts&Order to Show Cause re:order should not be entered to suspend and stay preliminary injunction during pendency of appeal &why an order should not be entered to provide for periodic increases in amt of bond posted ;further ordered that personal service of this order and papers upon which it is granted upon counsel of record for pltff&deft.Burgess Ind.Inc.by 5:00 o'clock in afternoon on 2/26/76 shall be good&sufficient service.Tenney,J
03-24-76	Filed Memo End.on Order to show cause of same date.At conclusion of trial, deft Buffalo Forge Company moved to vacate preliminary injunction herein entered by this Court on 1/26/76 Motion denied.So Ordered.Tenney,J(mn)

IN THE UNTIED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MUNTERS CORPORATION (A Delaware Corporation), Plaintiff, v. BURGESS INDUSTRIES INCORPORATED (A Delaware Corporation) and BUFFALO FORGE COMPANY (A New York Corporation) Defendants.	75 Civil Action No. 4622- JUDGE CHARLES M. TENNEY

FILED SEPT. 19, 1975

COMPLAINT FOR A DECLARATORY
JUDGMENT UNDER THE ANTITRUST LAWS

Plaintiff, Munters Corporation (hereinafter referred to as "Munters") by its attorneys Curtis, Morris & Safford, P. C., complains of Defendants, Burgess Industries Incorporated (hereinafter referred to as "Burgess") and Buffalo Forge Corporation (hereinafter referred to as "Buffalo Forge") and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is for a declaratory judgment to settle an actual and justiciable controversy between the parties hereto (28 U.S.C. §§2201 and 2202) arising under the Antitrust Laws of the United States, namely the Sherman and Clayton Acts (15 U.S.C. §§1, 2, 14 and 15), and relating to a certain patent sublicense agreement between Munters and Buffalo Forge containing a field of use restric-

tion which Burgess contends is being used by Munters and Buffalo Forge to carry out antitrust violations.

2. Jurisdiction is conferred upon this Court by Section 4 of the Clayton Act (15 U.S.C. §15).

3. Defendants transact business and are found within the Southern District of New York; and Defendant Burgess has appointed a resident agent for service in the Southern District of New York, The Corporation Trust Company, 277 Park Avenue, New York City, New York. Venue is proper in this Court under 15 U.S.C. §§15 and 22.

II

THE PARTIES

4. Munters is a Delaware Corporation having a place of business at 1205 Sixth Street, Fort Myers, Florida.

5. Burgess is a Delaware Corporation having a principal place of business at 8101 John Carpenter Freeway, Dallas, Texas and is authorized to transact business in the State of New York. On information and belief, Burgess is doing business in the State of New York and in this District and it has appointed as its registered agent for the service of process The Corporation Trust Company, 277 Park Avenue, New York, New York.

6. Buffalo Forge is a New York Corporation having a principal place of business at 490 Broadway, Buffalo, New York 14202. On information and belief Buffalo Forge transacts business in this District and maintains offices for the conduct of such business at 545 Fifth Avenue and 15 West 44th Street, City, County and State of New York.

III

NATURE OF INTERSTATE TRADE AND COMMERCE

7. Munters is the licensee of the following United States Patents:

Patent No.	Issue Date
3,262,682	July 26, 1966
3,265,550	August 9, 1966
3,395,900	August 6, 1968
3,395,903	August 6, 1968
3,450,393	June 17, 1969
3,526,393	September 1, 1970
3,574,032	April 6, 1971
3,599,943	August 17, 1971

(hereinafter the "licensed patents").

8. Munters holds its license under these patents from the patent owner AB Carl Munters (a Swedish Company whose address is Fack, S-191 Sollentuna 1, Sweden), to make, use and sell the inventions of the licensed patents; Munters also have the right to grant sublicenses under the patents.

9. The licensed patents relate to a cross-fluted, corrugated packing material which is suitable for a number of uses, such as for example as a fill material in liquid-gas contact apparatus, cooling towers, and evaporative coolers.

10. Munters has worked with Buffalo Forge to develop new potential uses for the fill material which Munters produced and together they found the fill material to be highly suitable for use in cooling air for gas turbines. To encourage Buffalo Forge's uses of the fill material in this area Munters, on October 6, 1972, at the request of Buffalo Forge granted a restricted exclusive sublicense under the licensed patents to Buffalo Forge. The sublicense authorizes Buffalo Forge to use and sell (but not make) the fill material solely in a specific "product use area" defined as "evaporative cooling

applications for cooling air, where the cooling of the air is obtained by evaporation of moisture therein, for gas turbines having a minimum rated capacity of at least 500 horsepower and for the equipment connected thereto." A copy of the sublicense agreement between Munters and Buffalo Forge is annexed hereto as Exhibit 1. Portions of the agreement relating to the quantity minimums and specific prices for the fill material have been expurgated on the annexed copy of the agreement as that information is confidential and not relevant to the controversy in this action.

11. Munters has continued to manufacture the same type of patented fill material and sells it in interstate commerce to Buffalo Forge and to various other customers for uses in areas other than the specific "product use area" for which Buffalo Forge is sublicensed.

12. Burgess is a customer of Munters and purchases this same type of patented fill material from Munters for use in a variety of applications, other than the specific product use area licensed to Buffalo Forge.

IV

THE CONTROVERSY AND ALLEGED OFFENSES

13. On information and belief Burgess has taken Munters' fill material which it stockpiled from prior purchases from Munters, which purchases allegedly had been for authorized uses, and used that fill material in the specific product use area for which Buffalo Forge is exclusively sublicensed. Further, Burgess has made or is making, or has offered to make, using Munters' fill, an evaporative cooler for a gas turbine engine for a customer in the product use area exclusively sublicensed to Buffalo Forge.

14. Buffalo Forge called the original unauthorized use of the fill material by Burgess to the attention of Munters and, at

Buffalo Forge's demand, Munters informed Burgess of Munters' license arrangement with Buffalo Forge. Munters further demanded that Burgess make the following commitment to Munters whenever it purchased Munters' fill, i.e. that:

> "The Munters fill product covered by this purchase order will not be used by Burgess Industries for evaporative cooling applications for cooling air, where the cooling of the air is obtained by evaporation of moisture therein, for gas turbines having a minimum rated capacity of at least 500 horsepower and for equipment connected thereto."

15. Burgess has advised Munters that it intends to use Munters' fill material in the exclusive product area which Munters has licensed to Buffalo Forge and either will not make the commitment or will so limit it to permit Burgess to use the fill in the Buffalo Forge exclusive product use area if it so elects.

16. Burgess has further advised Munters that it considers the license agreement between Munters and Buffalo Forge to be invalid and unenforceable.

17. Burgess has also informed Munters that it believes that the field of use restriction provided for by the sublicense agreement between Munters and Buffalo Forge is illegal as an attempt by Munters and Buffalo Forge to tie patented Munters fill material to unpatented apparatus, i.e. gas turbines, and therefore a violation of the anti-trust laws.

18. Buffalo Forge, on the other hand, has demanded that Munters either stop selling its fill material to Burgess for any use, or obtain an absolute assurance that Burgess does not use the fill material in Buffalo Forge's exclusive product use area.

19. Buffalo Forge has advised Munters that it believes the agreement between Munters and Buffalo Forge is valid and enforceable and that it does not constitute either a patent misues or a violation

of the antitrust laws. Buffalo Forge has threatened to bring action against Munters to enforce Buffalo Forge's exclusive sublicense and to recover alleged damages from Munters if Munters sells the fill material to Burgess and it is used by Burgess in Buffalo Forge's product use area.

20. Munters believes that its sublicense agreement with Buffalo Forge is good and valid at law and does not constitute a violation of the antitrust laws, however Munters is faced with the dilemma that if it does sell its fill material to Burgess, and the fill is used in the Buffalo Forge product usea area, it will be sued for breach of contract by Buffalo Forge and if it does not sell the fill to Burgess it will be sued by Burgess for damages under the anti-

21. There is a real and justiciable controversy between the parties which can only be resolved by this Court making a determination of the validity of the exclusive sublicense granted by Munters to Buffalo Forge and whether or not Munters may refuse to sell fill to Burgess if Burgess refuses to recognize the exclusive rights granted to Buffalo Forge.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff asks that:

(1) This Court grant a declaratory judgment and adjudge and decree that the sublicense agreement between Munters and Buffalo Forge is good and valid at law and is enforceable.

(2) This Court grant a declaratory judgment and adjudge and decree that Munters has not monopolized, and/or attempted to monopolize, and/or engaged in a combination or conspiracy to restrain, monopolize or attempt to monopolize in the United States the aforesaid trade and commerce in cross-fluted, corrugated packing material

in violation of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§1 and 2).

(3) This Court grant a declaratory judgment and adjudge and decree that the sublicense agreement between Munters and Buffalo Forge does not violate the antitrust laws of the United States.

(4) This Court grant a declaratory judgment and adjudge and decress that Munters may lawfully demand from Burgess an undertaking and commitment that Munters patented fill material purchased by Burgess from Munters will not be used in the product use area exclusively sublicensed by Munters to Buffalo Forge.

(5) This Court grant a declaratory judgment and adjudge and decrees that Munters may lawfully refuse to sell Munters patented fill material to Burgess unless Burgess agrees and abides by an undertaking and commitment that it will not use such fill material in the

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product use area exclusively sublicensed by Munters to Buffalo Forge.

(6) That defendants and all persons acting on their behalf be enjoined and restrained preliminarily, pending the outcome of this litigation, and permanently thereafter, from threatening legal action and asserting rights to relief against Munters under the antitrust laws or under the agreement between Munters and Buffalo Forge.

(7) Munters recover the costs of this suit, including reasonable attorneys fees; and

(8) Munters have such other and further relief as the Court may deem just and proper.

Dated: September 1975
New York, New York

MUNTERS CORPORATION

CURTIS, MORRIS & SAFFORD, P. C.
Attorneys for Plaintiff

By _____
John A. Mitchell
A Member of the Firm
530 Fifth Avenue
New York, New York 10036
212-682-7171

Of Counsel:
John A. Mitchell
Pasquale A. Razzano

AGREEMENT

THIS AGREEMENT, dated this 6th day of October, 1972, by and between MUNTERS CORPORATION, a Delaware corporation, having its principal offices at 1205 Sixth Street, Fort Myers, Florida 33901 (hereinafter called "Munters Florida"), and BUFFALO FORGE COMPANY, a New York corporation, having its principal offices at 490 Broadway, Buffalo, New York 14204 (hereinafter called "Buffalo").

W I T N E S S E T H:

WHEREAS, Munters Florida now makes and sells a proprietary packing material for gas-liquid contact apparatus, referred to as Munters' Fill and which is the subject of several United States Letters Patent referred to herein as the "Fill Patents");

WHEREAS, Munters Florida has the exclusive right to make, use and sell the Munters' Fill in the Product Use Area in the Exclusive Territory under the Fill Patents;

WHEREAS, Buffalo has experimented with and intends to experiment further and to develop the application and use of Munters' Fill as a new competitive product in the Product Use Area and the parties agree that cooperation between said parties is necessary during the period of experimentation, and during such period Buffalo must be assured of a supply of Munters' Fill and Munters Florida is willing to make it exclusively available to Buffalo in the Product Use Area in the Exclusive Territory for a limited

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PLF. DEFT. Burgess EX # 3-16 WIT UNLESS FOR ID DATE 3-16-76 BAR ASS'N. REPORTING SERVICE

period as hereinafter defined; and

WHEREAS, Buffalo desires, upon having developed the use of Munters' Fill as a competitive product in the Product Use Area, to obtain the exclusive right under the Fill Patents for said use;

NOW, THEREFORE, in consideration of the mutual agreements, promises and undertakings set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by both parties hereto, Munters Florida and Buffalo intending to be legally bound, agree as follows:

ARTICLE I: Definitions

As used hereinafter the following terms shall have the following meanings, respectively:

a) "Munters' Fill": a cross-fluted, corrugated packing material produced commercially by Munters Florida for use presently outside the Product Use Area and disclosed in at least some of the Fill Patents;

b) "Product Use Area": evaporative cooling applications for cooling air, where the cooling of the air is obtained by evaporation of moisture therein, for gas turbines having a minimum rated capacity of at least 500 Horsepower and for the equipment connected thereto.

c) "Exclusive Territory": the United States and its territories and possessions;

d) "Munters' standard selling prices and terms":

the selling prices and terms charged by Munters Florida for identical products offered for sale and/or sold to others by Munters Florida for use outside of the Product Use Area;

e) "Fill Patents": United States Letters Patent under which Munters Florida has the exclusive right to make, use and sell the Munters' Fill in the Exclusive Territory for use in the Product Use Area and to sub-license others thereunder, said patents being set forth and identified in Appendix "A" attached hereto.

ARTICLE II: Grant of License

1. Subject to and to be effective when Buffalo shall have established the use of Munters' Fill as a competitive product for use in the Product Use Area, Munters Florida grants to Buffalo, under the terms of this Agreement, the exclusive right and sub-license under the Fill Patents to use and sell Munters' Fill solely for use in the Product Use Area throughout the Exclusive Territory, and to sub-license others to use such licensed Munters' Fill obtained from Buffalo solely for use in the Product Use Area throughout the Exclusive Territory. Munters Florida reserves all other rights it may have under the Fill Patents for uses of Munters' Fill not within the Product Use Area. Nothing in this Agreement shall be interpreted or construed to grant to Buffalo or its customers any rights whatsoever to manufacture Munters' Fill.

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2. Munters Florida represents and warrants to Buffalo that it possesses the right, title and interest sufficient to enable it to make the grant to Buffalo of the exclusive right and sub-license set forth above.

3. Munters Florida shall do no act which will interfere or restrict Buffalo's quiet enjoyment of the exclusive right and sub-license granted herein, such as, for example, Munters Florida will not knowingly sell Munters' Fill to purchasers whose intended use falls within the Product Use Area.

4. This sub-license herein granted shall automatically become effective during the first term of this Agreement if and when Buffalo shall have developed the use of the Munters' Fill as a competitive product and this shall be deemed to have occurred when Buffalo has actually purchased or placed firm orders with Munters Florida for a minimum of ten thousand (10,000) cubic feet of Munters' Fill for use in the Product Use Area as provided for hereinafter in Article V, Paragraph 1. If said minimum amount of Munters' Fill shall not have been purchased or firm ordered, as herein provided, the grant of the sub-license as set forth in Article II, Paragraph 1 shall become effective at the beginning of the second term of this Agreement on January 1, 1974 and continue so long as this Agreement shall be in effect, unless Munters Florida shall exercise its right of termination in accordance with Article VI, Paragraph 4, hereinafter.

5. No royalty shall be payable by Buffalo to

Munters Florida under the sub-licensed Fill Patents, the parties having provided for minimum purchases and payments in Article V hereafter.

ARTICLE III: Notice of License

1. Munters Florida shall take the appropriate and reasonable action necessary to advise its employees, distributors, and purchasers of Munters' Fill of the exclusive area of use granted to Buffalo herein.

2. In the event that Buffalo shall bring to the attention of Munters Florida the fact that a purchaser, other than Buffalo, of Munters' Fill from Munters Florida, has used or sold said fill for use in the Product Use Area in the Exclusive Territory, Munters shall promptly inform said customer of the exclusive use, sub-license and/or supply agreement granted to Buffalo herein. A true and correct copy of said written notice shall be promptly sent to Buffalo.

ARTICLE IV: Purchase Requirement

1. Buffalo desires to and shall, during the term of this Agreement, purchase from Munters Florida, and Munters Florida agrees to sell exclusively to Buffalo, a substantial portion of Buffalo's fill requirements for use in the Product Use Area in the Exclusive Territory; and Buffalo will use Munters' Fill in the Product Use Area in the Exclusive Territory except when its customers desire other types of fill to be used.

2. The price to be charged and the selling terms to be granted by Munters Florida to Buffalo shall be Munters' standard

prices and terms, in effect at the time an order is placed, subject to a yearly price escalation of not more than seven percent (7%) in the event that listed Munters Florida prices shall have increased at the time of delivery requested by Buffalo, said escalation to be effective only in the event that said delivery date is more than six (6) months after the date of placing of a firm order.

ARTICLE V: Minimum Purchase Requirements

1. Buffalo shall purchase from Munters Florida a minimum of cubic feet of Munters' Fill prior to the end of the first term of this Agreement on December 31, 1973. Such minimum purchase amount shall include all firm orders placed by Buffalo prior to December 31, 1973 requiring delivery by December 31, 1974. If Buffalo fails to purchase or place on firm order such minimum amount by December 31, 1973, Buffalo shall pay to Munters Florida the sum of for each cubic foot less than cubic feet which it has not purchased or placed on firm orders by that date.

2. If the first term of this Agreement is extended for a second term from January 1, 1974 to December 31, 1975, during said second term Buffalo shall purchase from Munters Florida, or place on firm orders for delivery before December 31, 1976, a minimum of cubic feet of Munters' Fill prior to December 31, 1975. If Buffalo fails to purchase or firm order such minimum amount by December 31, 1975, Buffalo shall pay to Munters

Florida the sum of for each cubic foot of Munters' Fill less than cubic feet which it has not purchased or placed on firm orders during said second term by that date.

3. If the term of this Agreement is extended for a third term from January 1, 1976 to December 31, 1977, during said third term Buffalo shall purchase from Munters Florida or place on firm orders for delivery before December 31, 1978, a minimum of cubic feet of Munters' Fill prior to December 31, 1977. If Buffalo fails to purchase or firm order such a minimum amount by December 31, 1977, Buffalo shall pay to Munters Florida for each cubic foot of Munter's Fill less than cubic feet which it has not purchased or placed on firm order during said third term by that date.

4. The parties agree that it may be desirable to extend this Agreement for a fourth or a fifth term to December 31, 1979 and December 31, 1981. In the event that Buffalo elects to so extend this Agreement the minimum amounts of Munters' Fill to be purchased or placed on firm order during each term shall be cubic feet. The firm orders for the fourth period must call for delivery by December 31, 1980 and for the fifth period by December 31, 1982. If Buffalo fails to purchase or order the minimum amounts for the fourth and fifth terms by December 31, 1979 and 1981, respectively, Buffalo shall pay to Munters Florida for each cubic foot of Munters' Fill less than cubic feet which it has

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not purchased or placed on firm order during each said fourth and fifth terms by said dates.

5. Any amounts of fill over and above the required minimum purchased or placed on firm order during any period may be carried over as a credit towards the required minimum amounts, as set forth in this Article V and Paragraph 5, Article VI, for the next term of this Agreement.

6. If any minimum payments are required to be made by Buffalo to Munters Florida under the provisions of this section, said payment(s) shall be made not later than the last day of February in each of the years 1974, 1976, 1978, 1980 and 1982, if applicable.

7. In the event that Buffalo shall cancel any orders once accepted by Munters Florida, Buffalo shall pay to Munters Florida a cancellation charge equal to the direct cost of labor and materials actually expended towards the manufacture of goods for the cancelled order, plus Munters Florida's overhead percentage on direct labor and materials in effect at the time of cancellation, and a pro-rata share of the profit Munters Florida would have realized on the completed order. The pro-rata share of such payments to the contract price of the fill shall be multiplied by the number of cubic feet of the order and the resulting number of cubic feet allowed towards minimum purchase requirements. In the event that said cancellation shall reduce the amounts of fill for any term below the minimum purchase requirements, Buffalo shall in addition pay to Munters Florida the sum of for each cubic foot said amounts are below the minimum requirements.

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ARTICLE VI: Term and Termination

1. The first term of this Agreement shall extend to December 31, 1973. Second, third, fourth and fifth terms of two years each extending in total to December 31, 1981 may be added at the option of Buffalo provided Buffalo has complied with Article V relating to minimum purchases or firm orders, and any minimum payments.

2. Notice of the addition of further terms after the first term shall be given to Munters Florida in writing not less than three (3) months prior to the termination of the prior term if Buffalo desires to extend said term. If no notice of term extension is given by Buffalo and this Agreement is not terminated at an earlier time as provided herein, this Agreement will terminate automatically at the end of the then-current term.

3. Not withstanding any other provisions in this Agreement, Buffalo shall have the right to terminate this Agreement as follows: During the first term of this Agreement, Buffalo shall have the right to terminate this Agreement on December 31, 1972 upon payment to Munters Florida the sum of less a deduction of for each cubic foot of Munters' Fill purchased by Buffalo or placed on firm orders by that time for delivery not later than December 31, 1972. Buffalo may also terminate this Agreement on June 1, 1973 upon payment to Munters Florida of the sum of less a deduction of for each cubic foot of Munters' Fill purchased by Buffalo or placed on firm orders for delivery by December 31, 1973.

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4. In the event that Buffalo has not purchased by December 31, 1973 or placed on firm orders by that date for delivery by December 31, 1974, a cubic feet of fill, Munters Florida, at its option, may terminate this Agreement and any rights granted hereunder to Buffalo for the exclusive use of Munters' Fill in the Product Use Area in the Exclusive Territory. Not withstanding the right of Buffalo to extend this Agreement for a second term as provided in this Article VI, in the event that Munters Florida elects to terminate this Agreement as provided for in this Paragraph 4, it shall give written notice to Buffalo to that effect no later than January 31, 1974 and said Agreement shall be considered to be terminated retroactively to December 31, 1973.

5. Munters Florida shall have the right at the completion of the second, third and fourth terms of this Agreement to terminate the right granted hereunder to Buffalo for the exclusive use of Munters' Fill in the Product Use Area in the Exclusive Territory, in the event that: (a) Buffalo has neither purchased during the second term or placed on firm orders for delivery by December 31, 1976, a minimum of cubic feet of fill, nor a minimum total of) cubic feet of fill during the first and second terms; (b) that Buffalo has neither purchased during the third term or placed on firm orders for delivery by December 31, 1978, a minimum of cubic feet of fill, nor a minimum total of cubic feet of fill during the first, second and third terms; or (c) that Buffalo has neither purchased during the fourth term or placed on firm orders for delivery by December 31, 1980, a minimum of cubic feet of fill, nor a minimum total of

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cubic feet of fill during the first, second, third and fourth terms. Not withstanding the right of Buffalo to extend this Agreement for third, fourth and fifth terms as provided in this Article VI, in the event that Munters Florida elects to terminate this Agreement as provided for in this Paragraph 5, it shall give written notice to Buffalo to that effect no later than the 31st day of January, 1976, 1978 and 1980 for the preceding term and said Agreement shall be considered to be terminated retroactively to the preceding 31st day of December.

6. In the event that during any term of this Agreement, a third party sells and/or uses a fill product in the Product Use Area which infringes any of the sub-licensed Fill Patents and said party substantially competes with Buffalo in the sale and/or use of Munters' Fill in the Product Use Area, and, within six (6) months after Munters Florida has received written notice of the infringement from Buffalo, Munters Florida does not commence suit for patent infringement or otherwise act to prevent such future sales or use of said product by said third party, Buffalo shall have the right to terminate this Agreement on thirty (30) days written notice. If this Agreement is so terminated on this ground, Buffalo shall have no further obligation to Munters Florida except to pay for the Munters' Fill purchased and received by Buffalo or placed on firm orders as of the effective date of termination, subject to the cancellation provisions of Article V, Paragraph 6, and/or a pro-rata of the minimum amounts due under this

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Agreement as of the date of notice of said infringement to Munters Florida by Buffalo. In the alternate, after the first term, Buffalo may elect not to terminate this Agreement in the event Munters Florida does not commence suit, but instead exercise an option to have the required minimum purchases set forth in Article V for subsequent terms, reduced by one-half so long as the infringement exists, the infringing third party substantially competes with Buffalo and Munters does not commence suit or otherwise act to prevent such future sales or use of said product by said third party.

If Munters Florida elects to file a suit upon notice from Buffalo it need not file any additional suits upon further notices from Buffalo relating to other parties, so long as one suit is pending. In any litigation involving the sub-licensed patents Buffalo and Munters Florida agree to cooperate.

7. If any claim of any of the sub-licensed patents shall be held invalid or not infringed in any litigation involving a third party by a final judgment of a United States Court of competent jurisdiction from which no appeal or petition for certiorari can be taken, Buffalo shall have the benefit of such final judgment to

the same extent as said third party.

8. In the event that either party shall default in carrying out any of the conditions or provisions of this Agreement, the other party may terminate this Agreement on thirty days' (30) written notice to the defaulting party unless said default shall be cured within thirty (30) days after notice of said default is received by the defaulting party. In the event that a party shall commit the same default a second time in not carrying out any of the conditions or provisions of this Agreement, the other party may terminate the Agreement forthwith on thirty (30) days' written notice to the defaulting party.

9. If Buffalo shall be prevented from using the Munters' Fill in the Product Use Area in a substantial portion of the Exclusive Territory, by order or judgment of a court of competent jurisdiction from which no appeal or petition for certiorari can be taken, Buffalo may terminate this Agreement on thirty (30) days' written notice to Munters Florida, If this Agreement is so terminated on this ground, Buffalo shall have no further obligation to Munters Florida except to pay for the Munters' Fill purchased and received by Buffalo and/or a pro-rata share of the minimum amounts due under this Agreement as of the effective date of termination.

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10. In the event that either party shall become bankrupt or insolvent, or there is an appointment of a receiver in bankruptcy for said party (and said appointment is not discharged within sixty (60) days) or there is an assignment by a party for the benefit of creditors, the other party may terminate this Agreement on sixty (60) days' written notice to the party.

ARTICLE VII: Miscellaneous

1. This Agreement may not be assigned by either party without the written consent of the other party, except that it may be assigned by Buffalo to any of its wholly owned subsidiaries, or by Munters Florida to a corporation into which Munters Florida shall merge or consolidate, or to which Munters Florida shall transfer substantially all of its assets, or to a wholly owned subsidiary of Munters Florida.

2. If Munters Florida shall make any improvement in the Munters' Fill and makes such improvement commercially available to others, Buffalo shall have the right to include such improvement in the Munters' Fill furnished by Munters Florida for use in the Product Use Area in the Exclusive Territory. If Munters Florida shall hereinafter obtain any rights under any United States Letters Patent relating to the use of Munters' Fill containing said improvements, said patents shall be included in the sub-licensed patents to Buffalo so long as this Agreement shall be in effect.

3. If Munters Florida shall during the time this Agreement is in effect receive any orders for Munters' Fill knowing said fill is intended for use in the Product Use Area in the Exclusive Territory, it shall not accept or fill the orders and shall so advise Buffalo of these orders.

4. This Agreement shall take effect and shall be construed in all respects in accordance with the laws of the State of New York.

5. Should either party fail to perform any of its obligations hereunder and should said party fail for a period of thirty (30) days to correct any such failure to perform or default called to its attention in writing by the other party, the parties hereto agree that, within thirty (30) days after said first thirty (30) day period, the complaining party may demand that any controversy arising out of or relating to said default or breach of this Agreement, shall be settled by Arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award may be entered in any Court having jurisdiction thereof. The Arbitration shall take place in New York City, New York.

6. In the event that Munters Florida elects to grant a similar agreement to a third party for a territory to include either the Dominion of Canada or the Republic of Mexico, Munters Florida shall give thirty (30) days' written notice of such intent to Buffalo and Buffalo shall have the right of first refusal for

said territories on terms and conditions at least as favorable as those for the Exclusive Territory or the terms and conditions offered a third party.

7. Any notice or report, required to be given under this Agreement by one party to the other shall be deemed to have sufficiently been given or made if given in writing, by personal delivery or by certified or registered mail with postage prepaid addressed to the party to whom notice or report is given or made at the address above given.

8. The foregoing paragraphs represent the entire agreement between the parties with respect to the subject matter of this Agreement and it may be amended only by a writing duly executed by each party in the same manner as this agreement is executed.

In Witness Whereof, the parties have executed this Agreement as of the date above written.

ATTEST:

(Seal)

MUNTERS CORPORATION

President

ATTEST:

(Seal)

BUFFALO FORGE COMPANY

President

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APPENDIX "A"

Munters No.	U.S. Patent No.	Issued	Title
M 1257	3,262,682	July 26,1966	Contact Bodies for Liquid and Gas
M 1271	3,450,393	June 17, 1969	Gas and Liquid Contact Apparatus
M 1273	3,265,550	Aug. 9, 1966	Gas and Liquid Contact Body
M 1284	3,395,903	Aug. 6, 1968	Air and Water Contact Body As Employed in Cooling Towers
M 1285	3,574,032	Apr. 6, 1971	Contact Body for Water and Air as Employed in Cooling Towers
M 1298	3,395,900	Aug. 6, 1968	Water Distribution System
M 1299	3,526,393	Sept. 1, 1970	Cooling Tower
M 1302	3,599,943	Aug. 17, 1971	Gas and Liquid Contact Apparatus

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MUNTERS CORPORATION Plaintiff v. BURGESS INDUSTRIES INCORPORATED and BUFFALO FORGE COMPANY Defendants	)	Civil Action No. 75 CIV. 4622 BEFORE JUDGE TENNEY

ANSWER OF BURGESS INDUSTRIES INCORPORATED

Defendant, Burgess Industries Incorporated (hereinafter referred to as "Burgess"), answers the Complaint herein as follows:

1. Answering paragraph 1 of the Complaint, admitted.

2. Answering paragraph 2 of the Complaint, admitted.

3. Answering paragraph 3 of the Complaint, admitted.

4. Answering paragraph 4 of the Complaint, Burgess is without knowledge or information sufficient to form a belief as to the truth of the averment that Munters is a Delaware corporation but admits that Munters has a place of business at 1205 Sixth Street, Fort Myers, Florida.

5. Answering paragraph 5 of the Complaint, admitted.

6. Answering paragraph 6 of the Complaint, Burgess is without knowledge or information sufficient to form a belief

as to the truth of the averment that Buffalo Forge is a New York corporation but admits the remaining allegations of paragraph 6.

7. Answering paragraph 7 of the Complaint, based on present knowledge, admitted.

8. Answering paragraph 8 of the Complaint, Burgess is without knowledge or information sufficient to form a belief as to the truth of the averment.

9. Answering paragraph 9 of the Complaint, admitted.

10. Answering paragraph 10 of the Complaint, Burgess is without knowledge or information sufficient to form a belief as to the truth of the averment that Munters has worked with Buffalo Forge to develop new potential uses of the fill material, or whether the purported License Agreement of October 6, 1972, was entered into to encourage Buffalo Forge's use of the fill material. Burgess admits that an expurgated copy of what is believed to be the agreement between Munters and Buffalo Forge is annexed to the Complaint as Exhibit 1, and denies the remaining allegations of paragraph 10.

11. Answering paragraph 11 of the Complaint, Burgess is without knowledge or information sufficient to form a belief as to the truth of the averment that Munters has sold only to Buffalo Forge for use in the "Product Use Area" and to various other customers for uses in areas other than the "Product Use Area". Burgess admits that Munters manufactures the fill material and sells it in interstate commerce to

Buffalo Forge and others. Burgess denies that a lawful sub-license is extended by Munters to Buffalo Forge by the agreement of October 6, 1972.

12. Answering paragraph 12 of the Complaint, admitted.

13. Answering paragraph 13 of the Complaint, Burgess admits that it has taken stockpiled fill material acquired from Munters and has used it in the "Product Use Area" purportedly licensed to Buffalo Forge, and further admits that it has made or is making or has offered to make, using Munters fill, an evaporative cooler for a gas turbine engine for a customer in the "Product Use Area" purportedly exclusively sublicensed to Buffalo Forge, but denies the remainder of the allegations of paragraph 13.

14. Answering paragraph 14 of the Complaint, Burgess is without knowledge or information sufficient to form a belief as to the truth of the averment that Buffalo Forge called the use of fill material by Burgess to the attention of Munters, but admits that Munters has informed Burgess of Munters license arrangement with Buffalo Forge (save and except for certain expurgated portions) and that Munters has demanded that it make the commitment detailed in paragraph 14 of the Complaint when purchasing Munters fill.

15. Answering paragraph 15 of the Complaint, admitted, except that Buffalo Forge does not, through any lawful relationship, have an "Exclusive Product Use Area".

16. Answering paragraph 16 of the Complaint, admitted.

17. Answering paragraph 17 of the Complaint, Burgess admits that it has informed Munters that it believes that the alleged "Field of Use Restriction" provided for by the purported sublicense agreement between Munters is illegal and is an attempt by Munters and Buffalo Forge to tie patented Munters fill material to unpatented apparatus, i.e., gas turbines, but denies that it has informed Munters that such is a violation of the antitrust laws, although it believes that such is a violation of the antitrust laws.

18. Answering paragraph 18 of the Complaint, Burgess is without knowledge or information sufficient to form a belief as to the truth of the averment.

19. Answering paragraph 19 of the Complaint, Burgess is without knowledge or information sufficient to form a belief as to the truth of the averment.

20. Answering paragraph 20 of the Complaint, Burgess is without knowledge or information sufficient to form a belief as to the truth of the averments, but admits that Munters is accurate in its belief that if it does not sell to Burgess that Burgess will sue for damages under the antitrust laws.

21. Answering paragraph 21 of the Complaint, admitted.

WHEREFORE, defendant Burgess asks that this Court adjudge and decree that:

1. the so-called sublicense agreement between Munters and Buffalo Forge is invalid and unenforceable;

2. Munters and Buffalo Forge have engaged in a combination or conspiracy to restrain trade and commerce in devices for conditioning air charged to gas turbines which devices employ a cross-fluted, corrugated packing material in violation of Section 1 of the Sherman Act (15 U.S.C. §1);

3. Buffalo Forge has attempted to monopolize trade and commerce in devices for conditioning air charged to gas turbines which devices employ a cross-fluted, corrugated packing material in violation of Section 2 of the Sherman Act (15 U.S.C. §2);

4. Munters must supply cross-fluted, corrugated packing material to Burgess on the same terms as it is supplied by Munters to Buffalo Forge and others;

5. Burgess recover the costs of this suit including reasonable attorneys fees;

6. Burgess be awarded threefold the damages sustained by it pursuant to 15 U.S.C. §15.

BURGESS INDUSTRIES INCORPORATED

By _____

John C. Vassil
Morgan, Finnegan, Pine,
Foley & Lee
345 Park Avenue
New York, New York 10022
212-758-4800

ATTORNEYS FOR DEFENDANT
BURGESS INDUSTRIES INCORPORATED

OF COUNSEL:

James A. Knox
George W. Fazakerly
Vial, Hamilton, Koch, Tubb,
Knox & Stradley
15th Floor
Republic National Bank Tower
Dallas, Texas 75201

V. Bryan Medlock, Jr.
Richards, Harris & Medlock
2420 Republic National Bank Tower
Dallas, Texas 75201

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of November, 1975, a true copy of the foregoing ANSWER OF BURGESS INDUSTRIES INCORPORATED was served, by first-class mail, postage prepaid, on:

John A. Mitchell, Esq.
Curtis, Morris & Safford
530 Fifth Avenue
New York, New York 10036
Attorney for Plaintiff

and was served, by first-class mail, postage prepaid on:

Joseph W. Burns, Esq.
Burns, Van Kirk, Greene & Kafer
521 Fifth Avenue
New York, New York 10017
Attorney for Defendant
Buffalo Forge Company

John C. Vassil

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MUNTERS CORPORATION (A Delaware Corporation), Plaintiff, v. BURGESS INDUSTRIES INCORPORATED (A Delaware Corporation) and BUFFALO FORGE COMPANY (A New York Corporation), Defendants.	)	CIVIL ACTION NO. 75 Civ. 4622 BEFORE JUDGE TENNEY

TO: John A. Mitchell, Esq.
Curtis, Morris & Safford
530 Fifth Avenue
New York, New York 10036
Attorney for Plaintiff

Joseph W. Burns, Esq.
Burns, Van Kirk, Greene & Kafer
521 Fifth Avenue
New York, New York 10017
Attorney for Defendant
Buffalo Forge Company

NOTICE OF MOTION

Sir:

PLEASE TAKE NOTICE that on the 25th day of November, 1975, defendant, Burgess Industries Incorporated, by its counsel, will bring on for hearing the attached Motion for Preliminary Injunction, and supporting memorandum, before the Honorable Charles H. Tenney of the United States District Court for the Southern District of New York, Room 1904, at 10:00 o'clock in the forenoon of said day, or as soon thereafter as it may be conveniently heard.

PLEASE TAKE FURTHER NOTICE that defendant, Burgess Industries Incorporated, will request to be orally heard on its Motion and a letter supporting this request will be filed with the Court.

Respectfully,

MORGAN, FINNEGAN, PINE, FOLEY & LEE

John C. Vassil
345 Park Avenue
New York, New York 10022
(212) 758-4800
Attorney for Defendant
Burgess Industries Incorporated

OF COUNSEL:

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MUNTERS CORPORATION (A Delaware Corporation), Plaintiff, v. BURGESS INDUSTRIES INCORPORATED (A Delaware Corporation) and BUFFALO FORGE COMPANY (A New York Corporation), Defendants.	CIVIL ACTION NO. 75 Civ. 4622 BEFORE JUDGE TENNEY

MOTION FOR PRELIMINARY INJUNCTION BY
BURGESS INDUSTRIES INCORPORATED

Defendant, Burgess Industries Incorporated, moves the Court for a Preliminary Injunction enjoining plaintiff, Munters Corporation, its agents, servants and attorneys, and all persons in active concert and participation with it, including Buffalo Forge Company, a defendant in this action, pending the final hearing and determination of this action, from failing or refusing to sell to Burgess a cross-fluted, corrugated packing material known as "Munters Fill" or "Munters Media" because of an agreement entered into on October 6, 1972, between Munters and defendant Buffalo Forge Company on the grounds that:

1. unless otherwise directed by this Court, Munters will continue to fail or refuse to sell the "Munters Fill" to Burgess for use in evaporative coolers connected to gas turbines, thereby making it impossible for Burgess to meet existing contract obligations to its customers for such devices and

to effectively compete with Buffalo Forge in the making of such devices;

2. the failure or refusal of Munters to sell "Munters Fill" to Burgess will result in irreparable injury, loss and damage to Burgess as more particularly detailed in the Affidavit of Ronald J. Yaeger, a Burgess employee, attached hereto as Exhibit A; and

3. the issuance of a Preliminary Injunction herein will not cause undue inconvenience or loss to Munters or Buffalo Forge but will serve to maintain the status quo and prevent irreparable injury to Burgess.

BURGESS INDUSTRIES INCORPORATED

By John C. Vassil

John C. Vassil
Morgan, Finnegan, Pine,
Foley & Lee
345 Park Avenue
New York, New York 10022
(212) 758-4800

ATTORNEYS FOR DEFENDANT
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Dallas, Texas 75201

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

MUNTERS CORPORATION (A Delaware Corporation),	X	
Plaintiff	X	
VS.	X	CIVIL ACTION NO.
BURGESS INDUSTRIES INCORPORATED (A Delaware Corporation) and BUFFALO FORGE COMPANY (A New York Corporation),	X	75 CIV 4622
Defendants.	X	

AFFIDAVIT OF RONALD J. YEAGER
CONCERNING EFFECT OF MUNTERS
CORP. REFUSAL TO SELL 'MUNTERS FILL'

I, RONALD J. YEAGER, having been duly sworn, depose and say:

I am the General Manager of the Environmental System Division of Burgess Industries, a defendant in the above-entitled action.

Burgess Industries' largest customers specify the use of Munters media when they request a bid or price quotation from Burgess Industries for evaporative coolers in connection with a gas turbine inlet silencer system.

Burgess Industries has purchased Munters media for a variety of uses for in excess of two (2) years. Until the controversy which is the subject of this declatory judgment action arose, Burgess Industries' management had thought it could buy and use Munters media for any purpose, as stated in Munters Corporation's price list, a copy of the most current price list being attached to this Affidavit as Appendix 1. Attention is directed to the paragraph entitled "Patent

Notice," which states essentially that the purchase of any Munters media product carries with it a free patent right to use said product in all areas of the world except Scandanavia.

Burgess Industries and the other Defendant in this action, Buffalo Forge Company, are the only known suppliers of evaporative coolers for gas turbine inlet system application, who are presently competing in the sale of such equipment. Should Burgess Industries be unable to obtain Munters media for use in gas turbine cooler application, it cannot effectively compete with Buffalo Forge in the gas turbine cooler industry, since most of its customers, such as General Electric Corporation, Westinghouse Corporation, and the Solar Division of International Harvester Company, specify the use of Munters media for such jobs.

There is no known material which can be substituted for Munters Media, within the limits of the manufacturing specifications of the customers and the applicable economic limits. Thus, the ability of Burgess Industries to compete, from both a marketing and economic standpoint, is materially and adversely affected by the refusal of Munters Corporation to supply said media for said use.

The total dollar volume of evaporative cooler business for gas turbine application which Burgess Industries expects to complete in calendar year I976 is approximately $1,000,000.

The following is a list of purchase orders which have already been received by Burgess Industries for Munters media evaporative coolers to be used in conjunction with gas turbines:

Customer	Customer P.O. to Burgess	Burgess P.O. No. to Munters	Date Media Requir to Fill Customer's Orders
Solar	2163-60063-K21	20-19261(1)	At Once
Westinghouse	51-2-PXE-91510-001	20-19256(2)	12-15-75
Westinghouse	51-2-PXE-91510-002	20-19257(3)	12-15-75
General Electric	750-DDD-ANWP-07313	20-19311(4)	12-30-75
General Electric	750-DDD-ANWP-07313		
Sui Northern Natural Gas Co.	T508/75	20-19326(5)	Will Advise

(1) See Appendix 2 attached hereto.

(2) See Appendix 3 attached hereto.

(3) See Appendix 4 attached hereto

(4) See Appendix 5 attached hereto

(5) See Appendix 6 attached hereto.

The total cost of Munters media to be used in the above-listed orders is approximately 15% of the total selling price of all such orders, and the approximate loss of revenue to Burgess Industries, should it be unable to supply these customers with the ordered equipment, is approximately $230,000. Additionally, Burgess Industries has received indications from these customers that existing price quotations from Burgess Industries for additional orders approximating $350,000 have been favorably received and purchase orders from these customers can be reasonably expected in the near future.

In connection with the above-listed orders, Burgess Industries has already proceeded with engineering drawings, reserved manufacturing time, and purchased other materials necessary to complete same.

Should Burgess Industries be unable to supply its customers with evaporative coolers utilizing the specified Munters media, it can be reasonably expected that Burgess Industries will also lose orders for:

(a) Gas turbine inlet silencers ($100,000 approximate cost per large industrial gas turbine);

(b) Filter assemblies, if required by specifications ($60,000 approximate cost per large industrial gas turbine); and

(c) The aforementioned evaporative cooler itself.

This result is expected because of the experience and past success of Burgess Industries in marketing the total gas inlet silencer system; i.e., Burgess' customers are influenced by the convenience and desirability of having a single supplier to assemble and test the entire inlet system before shipment to a job site, which is always remotely located.

Affiant has been informed by Mr. Ulf Nordling, the President and Chairman of the Board of Munters Corporation, that Munters will not accept orders from Burgess Industries for Munters media for gas turbine application pending the resolution of this lawsuit.

Unless Munters Corp. is enjoined, during the pendency of this action, from refusing to sell its product to Burgess Industries for use in evaporative coolers to be attached to gas turbines, Defendant Burgess Industries will suffer great

and irreparable damage in that it will be unable to perform both its existing and its anticipated contractual obligations relating to products which specify the use of Munters media, resulting in great damage to Burgess Industries' reputation, ability to compete, and loss of profits and good will.

Further Affiant saith not.

Ronald J. Yaeger
RONALD J. YAEGER

THE STATE OF TEXAS X

COUNTY OF DALLAS X

SUBSCRIBED AND SWORN TO BEFORE ME this the 12th day of November, 1975.

Barbara White
Notary Public in and for
Dallas County, Texas

My Commission Expires:
June 1, 1977

BARBARA WHITE, Notary Public
In and for Dallas County, Texas
My Commission Expires June 1, 1977

HUMI-KOOL - PRICE LIST NO. 7

Date of Issue: January 1, 1975

CELdek

Type	Flute Size	Type of Sheets	Price/cu/ft. U.S.Dollars	Net Weight Lbs./cu.ft.
XF-5CA	6560/15	Crossflow fill with 6-mil, specially treated cellulose paper. Sheets are impregnated with melamine.	9.00	2.4
XF-5CR	6575/7.5	Crossflow fill with 6-mil, specially treated cellulose paper. Sheets are impregnated with melamine.	9.00	2.4
CF-5CA	6560	Counterflow fill with 6-mil, specially treated cellulose paper. Sheets are impregnated with melamine. Alternate tips available.	9.00	2.4

ASBESdek

Type	Flute Size	Type of Sheets	Price/cu/ft. U.S.Dollars	Net Weight Lbs./cu.ft.
XF-5AA	6560/15	Crossflow fill with 12-mil asbestos sheets, impregnated with melamine.	10.30	3.9
CF-5AA	6560	Counterflow fill with 12-mil asbestos sheets, impregnated with melamine. Alternate tips available.	10.30	3.8

DISTRIBUTION PADS

Type	Flute Size	Type of Sheets	Price/sq/ft. U.S.Dollars	Net Weight Lbs./sq.ft.
CF-6A	6590	Two-inch-thick counterflow fill for water distribution, consisting of 12-mil asbestos sheets, impregnated with chlorinated rubber. Neoprene coating on both sides.	3.10	1.0

(Continued on Page 2)

APPENDIX 1

Type	Flute Size	Type of Sheets	Price/sq.ft. U.S.Dollars	Net Weight Lbs./sq.ft.
CF-6AS	6590	Two-inch-thick counterflow fill for water distribution, consisting of 12-mil asbestos sheets, impregnated with chlorinated rubber. Neoprene coating on both sides. Stainless steel banding.	4.20	1.5
CF-6B	6590	Three-inch-thick counterflow fill for water distribution, consisting of 12-mil asbestos sheets, impregnated with chlorinated rubber. Neoprene coating on both sides.	3.70	1.4
CF-6BS	6590	Three-inch-thick counterflow fill for water distribution, consisting of 12-mil asbestos sheets, impregnated with chlorinated rubber. Neoprene coating on both sides. Stainless steel banding.	6.20	2.2

I M P O R T A N T: 6560/15 and 6560: Standard pack dimensions are 12" or 6" deep in the air-flow direction, 12' wide and 48" or 72" in length.
6575/7.5: Available only in 4" deep x 12" wide x 72" lengt

Above prices are F.O.B. Fort Myers, Florida, packing included.

Shipping Containers: Single wall cartons for all U.S. shipments except in full trailer lots.

Patent Notice: Each of these products is manufactured under one or more patents issued in the U.S.A. and foreign countries. Purchase of these products carries a free patent license to sell and use same in all areas of the world except Europe.

Freight Classification:

Truck - "Boards, blocks or panels, NOI, honeycomb cellular constructed, expanded, having a density of 2 lbs. per cubic foot, but less than 4 lbs. 24400 Sub 3"

XX

20- 19261

10/23/75 1 1 XX XX

Munter's Corporation
P.O. Box 6428
Page Park
Fort Myers, Florida 33901
Attn: John Johnson

XXX

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			XX			S.P.	
	Net 30		20-1400			A.K. Lehr	631-141(

1	16	ea	XF-5CA 12" X 12" X 72" - Cut as follows: (96 Cu. Ft.)	6.30/cu.ft.	604.80
			(12) 12" X 12" X 72" (12) 4" X 12" X 72"		
2	4	ea	CF-6B 3" X 12" X 48" (Distribution Pads) cut as follows: (16 S. F.)	2.59/S.F.	41.44
			(3) 3" X 12" X 48" (3) 3" X [illegible] X 48"		646.24
			Muntaf's Celdek fill to form (3) banks each 6" High X 4" Wide.		
			(Ref. J-47803)		
			NOTE: THIS IS A NOT RELEASED ORDER - HOLD FOR APPROVAL.		
			Please advise lead time for shipping when order is released.		

ACKNOWLEDGMENT

PURCHASING
OCT 30 1975
E S D

RECEIVED OCT 27 1975

Can ship [illegible] / WEEK AFTER NOTIFICATION

AKL 20-1400 0138

AK Lehr

0 48

ACKNOWLEDGMENT

20-19261

11/3/75 1 1 Change Order #1

Munter's Corporation
P.O. Box 5128
Page Park
Fort Myers, Floraida 33901
Attn: John Johnson

Burgess Industries
Silver Street
Fountain Inn, So. Carolin

This change order issued to release for fabrication and shipment the above order.

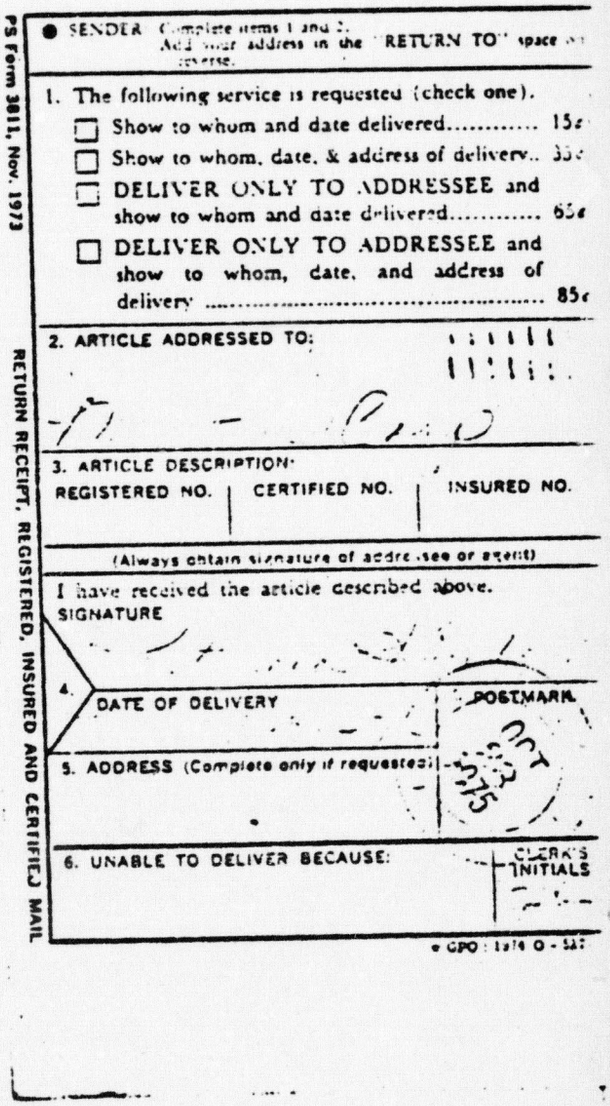
Date required at the plant is wk of 11/17/75.

akl J-47303 (20-1400) 0158

0 45

EK DLR

F/U-ALPHA F.



PS Form 3811, Nov. 1973

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER Complete items 1 and 2.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
- ☐ Show to whom and date delivered..... 15¢
- ☐ Show to whom, date, & address of delivery.. 35¢
- ☐ DELIVER ONLY TO ADDRESSEE and show to whom and date delivered..... 65¢
- ☐ DELIVER ONLY TO ADDRESSEE and show to whom, date, and address of delivery ..... 85¢

2. ARTICLE ADDRESSED TO:

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE

4. DATE OF DELIVERY — POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: — CLERK'S INITIALS

GPO : 1974 O - 537

BEST COPY AVAILABLE

BURGESS INDUSTRIES
ENVIRONMENTAL GROUP
[illegible] Dallas, Texas 75247 214 [illegible] 1310

November 7, 1975

Munter's Corporation
P.O. Box 6428
Page Park
Fort Myers, Florida 33901

Gentlemen:

Please find attached our Purchase Order #20-19256, J-47794 for $7,724.64. (Change Order #1).

Advise on our acknowledgement by 11/17/75 when you will be able to ship this order.

Very truly yours,

BURGESS INDUSTRIES

RC Bartlett
Purchasing Manager
Environmental Systems Division

RCB/al

Attachment

XX

20-19256

11/7/75 1 1 Change Order #1

TO: Munter's Corporation
P.O. Box 6428
Page Park
Fort Myers, Florida 33901

WILL ADVISE

This change order issued to rescind order as issued on date 10/21/75 and will now read as follows:

1	228	ea	XF5CA Celdek Melamine Coated Cellulose Fill 60" X 12" X 12" (1140 Cu Ft)	6.30/cuft	7182.00
2	24	ea	CF6B Counterflow Fill (Distribution Pad) 48" X 12" X 3" Thick (96 S.F.)	2.59/S.F.	248.64
3	6	ea	CF6B Counterflow Fill (Distribution Pad) 36" X 12" X 3" Thick (18 S.F.)	2.59/S.F.	46.62
4	24	ea	CF6A Counterflow Fill (Distribution Pad) 48" X 12" X 2" Thick (96 S.F.)	2.17/S.F.	208.32
5	6	ea	CF6A Counterflow Fill (Distribution Pad) 36" X 12" X 2" (18 S.F.)	2.17/S.F.	39.06
					7,724.64

THIS ORDER IS NOT RELEASED FOR FABRICATION OR SHIPMENT, PLEASE ADVISE LEAD TIME ON SHIP DATE UPON RELEASE OF ORDER.

akl J-47794 0363

Redacted

20- 19256

10/21/75 1 1 XX XX

Munter's Corporation
P.O. Box 6428
Page Park
Fort Myers, Florida 33901

XX

WILL ADVISE		Will Advise	Mtr Frt Advise
XX		S.P.	
Net 30	20-1400	A.K. Lehr	631-1410

1	8	ea	CF6B Counterflow Fill (Distribution Pad) 48" X 12" X 3" Thk (32 S.F.)	2.59/S.F.	82.88
2	2	ea	CF6B Counterflow Fill (Distribution Pad) 36" X 12" X 3" Thk (6 S.F.)	2.59/S.F.	15.54
					98.42

ACKNOWLEDGMENT

Ref: 5-47794

NOTE: This order is not released for fabrication or shipment. Please advise lead time on ship date upon release of order.

2 - 3 weeks

PURCHASING
NOV 5 1975
E S D

Confirming telecon to John Johnson @(813)936-1555 10/21/75.

ak1 20-1400 1354

A.K. Lehr

BEST COPY AVAILABLE

0 53

ACKNOWLEDGMENT

20- 19256

10/21/73 1 1 XX XX

Hunter's Corporation
P.O. Box 6428
Page Park
Fort Myers, Florida 33901 XX

					Mtr Frt
WILL ADVISE			Will Advise		Advise
		XX		S.P.	
Net 30		20-1400		A.K. Lehr	631-1410

1	8	ea	CF6D Counterflow Fill (Distribution Pad) 48" X 12" X 3" Thk	2.59/S.F. (32 S.F.)	82.88
2	2	ea	CF6B Counterflow Fill (Distribution Pad) 36" X 12" X 3" Thk	2.59/S.F. (6 S.F.)	15.54
					98.42

Ref. J-47794

NOTE: This order is not released for fabrication or shipment. Please advise lead time on ship date upon release of order.

Confirming telecon to John Johnson @(813)936-1555 10/21/73.

alk1 20-1400 1354

EW QJR

BEST COPY AVAILABLE

20- 19251

10/21/75 1 1 XX XX

Munter's Corporation
P.O. Box 6428
Page Park
Fort Myers, Florida 33901

S.O. XX

WILL ADVISE		Will Advise	Mtr Frt Advise
XX			S.P.
Net 30	20-1400	A.K. Lehr	631-141(

1	8	ea	CF6B Counterflow Fill (Distribution Pad) 48" X 12" X 3" thk (32 S.F.)	2.59/S.F.	82.88
2	2	ea	CF6B Counterflow Fill (Distribution Pad) 36" X 12" X 3" Thk (6 S.F.)	2.59/S.F.	15.54
					98.42

ACKNOWLEDGMENT

Ref. J-47795

NOTE: This order is not released for fabrication or shipment. Please advise lead time on ship date upon release of order.

2 to 3 weeks

PURCHASING
NOV 5 1975
E S D

Confirming telecon to John Johnson @(813)936-1555 10/21/75.

akl 20-1400 0351

A.K. Lehr

APPENDIX 4

0 55

ACKNOWLEDGMENT

^^

20- 19257

10/21/75 1 1 XX XX

Hunter's Corporation
P.O. Box 6428
Page Park
Fort Myers, Florida 33901 XX

					Mtr Frt	
WILL ADVISE				Will Advise		Advise
		XX			S.P.	
Net 30		20-1400			A.K. Lehr	631-1410

1	8	ea	CF6B Counterflow Fill (Distribution Pad) 48" X 12" X 3" thk (32 S.F.)	2.59/S.F.	82.88
2	2	ea	CF6B Counterflow Fill (Distribution Pad) 36" X 12" X 3" Thk (6 S.F.)	2.59/S.F.	15.54
					98.42

Ref. J-47795

NOTE: This order is not released for fabrication or shipment. Please advise lead time on ship date upon release of order.

Confirming telecon to John Johnson @(813)936-1555 10/21/75.

akl 20-1400 0351

0 56

BURGESS INDUSTRIES
ENVIRONMENTAL GROUP
6161 Carpenter Freeway Dallas, Texas 75247 214 631-1490

November 7, 1975

Munter's Corporation
P.O. Box 6428
Page Park
Fort Myers, Florida 33901

Gentlemen:

Please find attached our Purchase Order #20-19257, J-47795 for $7,724.64. (Change Order #1).

Advise on our acknowledgement by 11/17/75 when you will be able to ship this order.

Very truly yours,

BURGESS INDUSTRIES

RC Bartlett
Purchasing Manager
Environmental Systems Division

RCB/al

Attachment

XX

20-19257

11/7/75 1 1 Change Order #1

Munter's Corporation
P.O. Box 6428
Page Park
Fort Myers, Florida 33901

WILL ADVISE

This change order issued to rescind order as issued on date 10/21/75 and will now read as follows:

1	228	ea	XF5CA Celdek Melamine Coated Cellulose Fill 60" X 12" X 12"	(1140 Cu Ft)	6.30/cuft	7182.00
2	24	ea	CF6B Counterflow Fill (Distribution Pad) 48" X 12" X 3" Thick	(96 S.F.)	2.59/S.F.	248.64
3	6	ea	CF6B Counterflow Fill (Distribution Pad) 36" X 12" X 3" Thick	(18 S.F.)	2.59/S.F.	46.62
4	24	ea	CF6A Counterflow Fill (Distribution Pad) 48" X 12" X 2" Thick	(96 S.F.)	2.17/S.F.	208.32
5	6	ea	CF6A Counterflow Fill (Distribution Pad) 36" X 12" X 2" Thick	(18 S.F.)	2.17/S.F.	39.06
						7,724.64

THIS ORDER IS NOT RELEASED FOR FABRICATION OR SHIPMENT, PLEASE ADVISE LEAD TIME ON SHIP DATE UPON RELEASE OF ORDER.

akl J-47795 0364

0 58

BURGESS INDUSTRIES
ENVIRONMENTAL GROUP
8401 Carpenter Freeway Dallas Texas 75247 214 941-1400

November 3, 1975

Munter's Corporation
P.O. Box 6428
Page Park
Fort Meyers, Florida 33901

Gentlemen:

Please find attached our purchase order #20-19311, P-15995 for $11,682.72.

Advise on our acknowledgment copy by 11/14/75 when you will be able to ship this order.

Very truly yours,

BURGESS INDUSTRIES

R.C. Bartlett
Purchasing Manager

RCB/al

Attachment

XX

20- 19311

11/3/75 1 1 XXX XXX

Munter's Corporation
P.O. Box 6428
Page Park
Port Meyers, Florida 33901 XX

Mtr Frt

December, 1975 Advise on Acknowledg.

XX S.P.

Net 30 20-1400 RC Bartlett 631-14

1	304	ea	#XF5MA (6560/15) Asbesdek Crossflow Fill 60" X 12" X 12" (1520 ft^3)	7.21/cu ft	10,959.20
2	40	ea	#CF-6B (6590) Asbestos Counterflow Fill 36 Size 48" X 12" X 3" Thick 4 Size 24" X 12" X 3" Thick TOTAL (152 ft^2)	2.59/S.F.	393.68
2	40	ea	#CF-6A (6590) Asbestos Counterflow Fill 36 Size 48" X 12" X 2" Thick 4 Size 24" X 12" X 3" Thick TOTAL (152 ft^2)	2.17/S.F.	329.84
				TOTAL	11,682.72

This order not released for fabrication or shipment. Advise on acknowledgment lead time required from receipt of order to proceed to ship date.

Ref. P-15995

akl 20-1400 0354

0 60

RU ALPH

BURGESS INDUSTRIES
ENVIRONMENTAL GROUP
8101 Carpenter Freeway Dallas, Texas 75247 214/631-1410

November 7, 1975

Munter's Corporation
P.O. Box 6428
Page Park
Fort Myers, Florida 33901

Gentlemen:

Please find attached our Purchase Order #20-19326, J-47829 for $6,818.00.

Advise on our acknowledgement by 11/17/75 when you will be able to ship this order.

Very truly yours,

BURGESS INDUSTRIES

RC Bartlett
Purchasing Manager
Environmental Systems Division

RCB/al

Attachment

20-19326

11/7/75 1 1 XX XX

Munter's Corporation
P.O. Box 6428
Page Park
Fort Myers, Florida 33901

XX

WILL ADVISE

Mtr Frt

W ILL ADVISE

ADVISE ON OUR ACKNOWLEDGEMENT

XX

S.P.

Net 30 20-1400 RC Bartlett 631-1410

CELDEK MELAMINE COATED CELLULOSE FILL AS FOLLOWS:

1	150	ea	XF5CA - 60" X 12" X 12"	(750 cu ft) 6.30/cu ft	4725.00
2	150	ea	XF5CA - 60" X 12" X 4"	(250 cu ft) 6.30/cu ft	1575.00

COUNTERFLOW FILL (DISTRIBUTION PADS) AS FOLLOWS:

3	30	ea	CF6B - 48" X 12" X 3" Deep	(120 S.F.) 2.59/S.F.	310.80
4	30	ea	CF6B - 12" X 12" X 3" Deep	(30 S.F.) 2.59/S.F.	77.70
5	30	ea	CF6B - 48" X 4" X 3" Deep	(40 S.F.) 2.59/S.F.	103.60
6	30	ea	CF6B - 21" X 4" X 3" Deep	(10 S.F.) 2.59/S.E.	25.90

6,818.00

THIS ORDER NOT RELEASED FOR FABRICATION OR SHIPMENT. ADVISE LEAD TIME REQUIRED ON ACKNOWLEDGEMENT AFTER RECEIPT OF ORDER TO PROCEED TO SHIP DATE.

REF. J-47829

akl 20-1400 0362

BURGESS INDUSTRIES

0-62

Rcvd. XIX

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MUNTERS CORPORATION,	:	
Plaintiff,	:	75 Civ. 4622 (CHT)
v.	:	
BURGESS INDUSTRIES INCORPORATED and BUFFALO FORGE COMPANY,	:	
Defendants.	:	

ANSWER OF BUFFALO FORGE COMPANY

Defendant, Buffalo Forge Company (hereinafter referred to as "Buffalo Forge") by its attorneys, Burns, Van Kirk, Greene & Kafer, answers the complaint herein as follows:

1. Admits the allegations of paragraph 1.

2. Admits the allegations of paragraph 2.

3. Admits the allegations of paragraph 3.

4. Admits the allegations of paragraph 4.

5. On information and belief admits the allegations of paragraph 5.

6. Admits that Buffalo Forge is a New York corporation having a principal place of business at 490 Broadway, Buffalo, New York, and that it transacts business in this District. Except as so admitted, denies the allegations of paragraph 6.

7. Admits the allegations of paragraph 7.

8. On information and belief admits the allegations of paragraph 8.

9. Admits the allegations of paragraph 9.

10. Admits the allegations of paragraph 10.

11. Admits the allegations of paragraph 11.

12. Admits the allegations of paragraph 12.

13. Admits the allegations of paragraph 13.

14. Admits that Buffalo Forge called the original unauthorized use of the fill material by Burgess to the attention of Munters. On information and belief admits the remaining allegations of paragraph 14.

5. On information and belief admits the allegations of paragraph 15.

16. Admits the allegations of paragraph 16.

17. Admits the allegations of paragraph 17.

18. Admits that Buffalo Forge has insisted that Munters obtain assurance that Burgess will not use the fill material in Buffalo Forge's exclusive product use area. Except as so admitted, denies the allegations of paragraph 18.

19. Admits the allegations of paragraph 19.

20. Admits the allegations of paragraph 20.

21. Admits the allegations of paragraph 21.

WHEREFORE, defendant Buffalo Forge prays that:

(1) This Court grant a declaratory judgment and adjudge and decree that the sublicense agreement between Munters and Buffalo Forge is good and valid at law and is enforceable.

(2) This Court grant a declaratory judgment and adjudge and decree that Buffalo Forge has not monopolized, and/or attempted to monopolize, and/or engaged in a combination or conspiracy to restrain, monopolize or attempt to monopolize in the United States the aforesaid trade and commerce in cross-fluted, corrugated packing material in violation of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§1 and 2).

(3) This Court grant a declaratory judgment and adjudge and decree that the sublicense agreement between Munters and Buffalo Forge does not violate the antitrust laws of the United States.

(4) This Court grant a declaratory judgment and adjudge and decree that Munters may lawfully demand from Burgess an undertaking and commitment that Munters patented fill material purchased by Burgess from Munters will not be used in the product use area exclusively sublicensed by Munters to Buffalo Forge.

(5) This Court grant a declaratory judgment and adjudge and decrees that Munters may lawfully refuse to sell Munters patented fill material to Burgess unless Burgess agrees and abides by an undertaking and commitment that it will not use such fill material in the product use area exclusively sublicensed by Munters to Buffalo Forge.

(6) This Court enjoin Burgess from using Munters fill in the product use area during the period of exclusivity of the sublicense agreement between Munters and Buffalo Forge.

(7) Buffalo Forge recover the costs of this suit, including reasonable attorneys' fees; and

(8) Buffalo Forge have such other and further relief as the Court may deem just and proper.

BURNS, VAN KIRK, GREENE & KAFER

By Joseph W. Burns
Joseph W. Burns
521 Fifth Avenue
New York, N. Y. 10017
(212) 972-0500
Attorneys for Defendant
Buffalo Forge Company

Of Counsel

Donald G. McGrath, Esq.
McGrath, Meyer, Lieberman & Lipp
Suite 1400 Statler Hilton Bldg.
107 Delaware Avenue
Buffalo, New York 14202
(716) 856-6000

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MUNTERS CORPORATION (A Delaware Corporation), Plaintiff	75 Civ. No. 4622 (CHT)
- - against - -	AFFIDAVIT OF RONALD W. POKORSKI
BURGESS INDUSTRIES INCORPORATED (A Delaware Corporation), and BUFFALO FORGE COMPANY (A New York Corporation), Defendants.	

STATE OF NEW YORK)
: ss.:
COUNTY OF ERIE)

RONALD W. POKORSKI, being duly sworn, deposes and says:

1. I have been Product Engineer of the Evaporative Cooler line of Buffalo Forge Company, one of the defendants in this action since 1972. I started with the Company in 1968.

2. Promotion of Munter's Fill.

A. In early 1972 I began to establish a program of marketing and sales promotion on knowledge of our engineering departments reporting of the satisfactory performance and that the company was willing to go ahead with an exclusive liscensing arrangement with the Munter's Corporation for the sale of Aerofil media for turbine applications. (Aerofil is a trade name of Buffalo Forge Company for Munter's Fill).

B. I was in charge of preparing literature and seminars for principal customer showing why our new evaporative

cooler should be used in place of the type of coolers that have been used prior to Aerofil, that is, the fiberglass pad type, the polyester or dacron pad type, or the air washer type of coolers.

C. We conducted seminars, gave tours of our facilities and ran tests requested by certain customers in an effort to convince them of the products qualities, as indicated in the following list:

7/14/72	General Electric	Greenville, S.C.	Seminar
9/1/72	Westinghouse/Farr	Buffalo, N.Y.	Plant Tour
4/27/73	Westinghouse Generator Div.	Buffalo, N.Y.	Plant Tour
4/27/73	Turbo Power & Marine	Hartford, Conn.	Seminar
5/11/73	General Electric	Buffalo, N.Y.	Test
8/3/73	Westinghouse	Philadelphia	Seminar
9/14/73	Farr Co/Westinghouse	Los Angeles	Seminar
4/13/74	Turbodyne	Minneapolis	Seminar
4/30/74	General Electric	Greenville, S.C.	Conference

At the seminars and conferences, the appropriate personel accompanied me to discuss various aspects of the product such as engineering, economics, and product history.

At some seminars representatives of the Munter's Corporation participated in describing technical aspects and economic advantages of the fill.

Various visual aids were made up for these seminars including working models of the units and fairly detailed flip charts outlining various topics to be discussed.

D. In the course of the development, Munter's cooperated with us which resulted in the application for a joint patent in one aspect of the new development.

3. Burgess Order For Westinghouse Evaporative Coolers.

A. I am familiar with the order that Burgess accepted from Westinghouse Electric in 1974,to deliver eighteen (18) evaporative coolers using Munter's fill for use by Westinghouse's customer, Tri State Generation and Transmission Associates, Incorporated.

B. We were first contacted by Farr Company, to bid the gas turbine intake coolers as part of Farr's package to Westinghouse on the Tri States job.

The original quotation for this equipment was bid on August second, 1974 with a requested shipment of April first, 1975 or eight (8) months after quote and presumably receipt of an order. We considered this eight (8) months or thirty-two (32) weeks sufficient time to fabricate and have this equipment ready for shipment. Because of various changes in the specification we requoted to Farr Company on August fifteenth, 1974, on September thirteenth, 1974 and again on October twenty-ninth, 1974. We subsequently quoted direct to Westinghouse on November twlefth, 1974.

C. When Buffalo learned that Burgess had accepted this order we protested to both Munter's and Westinghouse that Burgess had acted in violation of our rights under our license with Munter's. We had also learned that Burgess had issued a hold harmless statement with respect to legal involvement to both Westinghouse and Farr Company.

BEST COPY AVAILABLE

4. Buffalo's Efforts To Recoup Investment.

Buffalo expended over one hundred twenty-eight thousand dollars in developing the new cooler using Munter's fill and promoting its acceptance by customers. In order to re-coup this investment, Buffalo had to obtain new business which it would not have received selling its other types of coolers. For example, General Electric was a Buffalo customer which would have purchased our coolers regardless of whether we developed the new cooler. Based on this predicate, it is my opinion, that Buffalo Forge has not, to date, recouped its investment.

5. Other Types of Evaporative Coolers.

In our opinion, there is a market for other types of evaporative coolers previously mentioned for commercial, industrial, as well as for gas turbine-related equipment. In October 1973, Buffalo Forge Company received an order for a spray type evaporative cooler for a General Electric gas turbine intake. This order was received after the Buffalo-Munter's agreement was made and also after Aerofil was written into the General Electric cooler specification. Any gas turbine manufacturer, if he is to sell his apparatus, must adhere to their customer's requirements regardless of what the gas turbine manufacturer's specification reads. In this case, the ultimate user did not specify or concurr with General Electrics' specification on Aerofil as the evaporative cooler. I believe that this illustrates a market for other types of evaporative cooling devices still exists.

Ronald W. Pokorski

Sworn To Before Me This
12th Day Of December 1975

Notary Public
ROBERT J. COATSWORTH
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 19.....

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MUNTERS CORPORATION (A Delaware Corporation), Plaintiff,	75 Civ. No. 4622 (CHT)
-- against --	AFFIDAVIT OF ROBERT JORGENSEN
BURGESS INDUSTRIES INCORPORATED (A Delaware Corporation), and BUFFALO FORGE COMPANY (A New York Corporation), Defendants.	

STATE OF NEW YORK)
: ss.:
COUNTY OF ERIE)

ROBERT JORGENSEN, Being duly sworn, deposes and says:

1. I have been Chief Engineer of the Air Handling Division of Buffalo Forge Company, one of the defendants in this action, since 1961. I started with the Company in 1948.

2. Buffalo Forge Products.

Buffalo Forge has four divisions, each of which makes a distinct class of products. The Machine Tool Division produces drilling machines, punches, and shears. The Pump Division produces centrifugal pumps of various descriptions. The Aerofin Division produces extended surface heat transfer equipment. The Air Handling Division produces fans, blowers, and exhausters, air cleaning equipment, air-conditioning cabinets, dehumidifiers, heating and ventilating units, and evaporative coolers.

3. Nature of Evaporative Cooling.

Evaporative cooling is a process which occurs in nature and which can be duplicated or imitated by proper engineering. The most prominent example in nature is the cooling process which accompanies sweating. As the sweat evaporates from the skin, there is a definite cooling sensation. Technically, the heat which is required to evaporate the water is obtained from the skin.

4. History of Buffalo Forge Activity with Evaporative Coolers For Gas Turbine Applications.

A. Prior to Buffalo Forge's first experiments with Munter's Fill in 1971, Buffalo had been in business for almost 100 years. It had been in the business of supplying evaporative coolers for gas turbine applications for almost 25 years. During the course of time, the requirements for gas turbine evaporative coolers had changed, and Buffalo tried to keep abreast of those changes.

B. The first major applications were selected for the primary purpose of air cleaning in dust storm liable areas. We used a heavy duty design of wet cell washer, with hopper type tanks, having flushing rings and greater than standard water volumes on the cell sprays. These units operated in the range of 95% cooling efficiency. This was considered an excellent dividend to the cleaning purpose. Some 40 or 50 units were sold for this basic approach. Gradually, reports of trouble filtered back to us and eventually, a full-scale field investigation was launched. This was triggered by installations at El Paso Natural Gas Company in Texas, New Mexico, and Arizona, where the situation became so bad, that the turbines were losing

speed at the rate of nearly 100 RPM per day. I spent about a week at various sites, checking. It was finally cured by cutting back on the spray volumes (decreasing washer efficiency). The efficiency was dropped from approximately 95% (heavier than standard spray volume and flooding nozzles) to approximately 80%. This took place in 1952 and 1953.

C. Due to this problem and costs, wet cell washers fell into disrepute and washers were used only infrequently, where special conditions were to knock down concentration of

---

june bugs and to scrub acid vapors from the air. This unit was a special air washer, designed to give about 70% cooling efficiency.

D. In the early sixties, the push for more and more power was on and cooling of intake air began to be required. We worked out, with minimum water volume, the early design SSH units, which relied on wetted pads for obtaining their cooling efficiency. These units were still, primarily, looked on as cleaning devices, but the accent was shifting. By control of spray volume (pump discharge pressure) and water particle size, the cooling efficiency was varied from 70 to 80%. This design worked out well, as far as cooling was concerned, but had two (2) problems on cleaning. The first was that on dry operation, the cells tended to clog and even though flushing nozzles had been furnished, the operating costs (cell replacement) were excessive. It was also determined at about this time in history, that it was better for turbine performance not to clean up the air too much.

E. In about 1964, a study was made and new design units were approved. With these units, the only function was cooling. The units were to be applied to standard filter houses, as an accessory. Some field tests or observations were made and all cells and eliminator plates were removed from the coolers. Since the primary function was now cooling and the principle application was in areas having usually both poor quality and low quantity water available, the first move was simply to remove the cells and reverse the spray direction. This decreased the cooling efficiency to approximately 55 - 60% with perhaps 5% increase across the filter house louvers. These units have worked out very well on several scores. Relatively low initial cost, low spray pump power, low water consumption and good appearance.

F. Even with the relatively low efficiency occasional difficulty was encountered, due to usage when the spread between wet-and dry-bulb temperature of the ambient air was too small. This was corrected by incorporating a dual permissive control cycle. The units were then monitored both as to degree of saturation (humidity) and temperature and unless both elements were satisfactory, the unit did not operate (control of spray pump motor). This involves a special control cubicle furnished with the washer and mounted and prewired to spray pump motor by B.F. Company.

G. We have worked closely with our customers, particularly General Electric Company, and as their requirements changed, we have redesigned our units to suit.

5. Beginning of Buffalo Interest In Munter's Fill.

A. Buffalo Forge was aware of Munter's Fill as early as 1963. At that time all Fill was manufactured in Sweden and our interest dwindled because it was not manufactured in the U.S. and licensing terms did not appear favorable at that time. Our interest was renewed in January 1971 when Mr. Virendra N. Kapoor visited the International Exhibit in Philadelphia which was held in conjunction with the ASHRAE meeting. In April 1971, we initiated a project (H-3068) to investigate the use of Munter's Fill for evaporative coolers. We obtained samples and tested for efficiency, pressure drop, and carryover.

B. Buffalo looked at the possibility of using Munter's Fill as an opportunity to offer some advantages to its customers for some of their gas turbine applications.

C. The reason we decided we would like to develop Munter's Fill for gas turbines is that we visualized that evaporative coolers could be made smaller and, therefore, less costly than with fine fiber media or even with certain spray type units.

D. Mr. Kapoor's report on H-3068 dated December 17, 1971, concluded that Munters "Humi-Kool" Fill was an excellent product and recommended that we develop an evaporative cooler for gas turbine and other applications. (Exc. BF46, BF47)

6. Negotiations With Munters For a License.

A. When Buffalo became seriously interested in the use of Munter's Fill in 1971, the Swedish company had set up a subsidiary in Florida which manufactured the Fill. Buffalo informed Munters that it had tested Munter's Fill and found it did a very good job. Buffalo advised Munters that it was pre-

pared to invest a considerable amount in the redesign of its units to enable them to incorporate Munter's Fill. Buffalo informed Munters it was prepared to expend considerable effort through its established sales force to make the potential users of this apparatus aware of the advantages to them. Buffalo's reason for desiring an exclusive license for alimited time period was to recoup its investment. It was recognized that the market for coolers was small as only a fraction of the gas turbines incorporated intake cooling or generator cooling.

B. Negotiations with Munters began around December 1971 when Mr. Kapoor explored the possibility of a license with Mr. Skold who, in turn, discussed it with Mr. Nordling. On February 10, 1972, I was authorized to actively pursue a license agreement. In early March 1972, I visited Ft. Myers to discuss terms with Mr. Nordling. I was made aware of a limited license granted to Research Cottrell. Mr. Nordling explained they could not grant a license to cover all evaporative cooling applications but would consider a narrower product use area. I pursued the gas turbine market. Negotiations continued by mail and telephone. Munters attorney, John A. Mitchell became involved and submitted a draft license patterned after their license with Research Cottrell. On June 9, 1972 I prepared an analysis of the market. On June 20, 1972 I was authorized to proceed. Some documents which illustrate the course of the negotiations are the following:

Ex. BF-48 - January 6, 1972-Schock Memorandum

Ex. BF-49 - February 10, 1972 Hauck Memorandum

Ex. BF-50 - May 19, 1972 Jorgensen letter to Munters

Ex. BF-51 - May 26, 1972 Jorgensen Memorandum

The license agreement was finally executed as of October 6, 1972.

7. Buffalo's Investment in the Development of the New Product.

A. The following is a list of the expenses incurred in developing the market for Munter's Fill in the gas turbine product use area.

PROJECTS (accumulated totals per accounting reports)

H-3068	Kapoor Report 12/17/51	$ 2,785.00
H-3115	Sound Attenuation	935.56
H-3119	Development	14,923.92
H-3131	Demonstration Unit	744.78
H-3146	10 Ft. High	1,017.22
H-3157	Demonstration Units 2/3 x $1,461.88	974.59
H-3161	Salt Carryover	2,198.00

TRAVEL (Out of Pocket per Expense Reports)

R.W. Pokorski	$ 2,454.68
V.N. Kapoor	2,574.66
R. Jorgensen	718.45

SALARY (Calculated from Estimated Hours x Approx. Rate x 2)

R.W. Pokorski	$ 52,500.00
V.N. Kapoor	12,000.00
R. Jorgensen	3,750.00
R.E. Schock	2,500.00
C.W. Lockhart	2,500.00

ADVERTISING (From Advertising Dept. Records)	$ 25,887.69
TOTAL	$128,423.55

B. In addition to the above, various Sales Offices invested both time and money in developing this market. Among the contributors were R.B. Taylor (Albany), R.L. Kunz (Greenville) F.D. Halladay (Los Angeles), N.G. Dragelin (Philadelphia), T.C. Hines (Minneapolis), G.A. Holzworth (Hartford), and R.G. Osborne (Buffalo).

8. Brief Summary of Work Performed:

H-3068 covered some testing to investigate the sound attenuation characteristics of the fill.

H-3119 covered the testing we did to determine the efficiency pressure drop and carryover characteristics of various combinations of fill and water distribution systems.

H-3131 covered the expenses of building a demonstration unit.

H-3146 covered the testing we did to investigate the potential for problems in stacking the fill to heights of 10 feet.

H-3157 covered the expense of additional demonstration units. Only two-thirds was considered applicable to gas turbine work.

H-3161 covered some testing we did in cooperation with G.E. regarding salt carryover (Sodium has been found corrosive to gas turbine parts).

Most of the travel expenses were for promotional trips. We conducted several seminars for gas turbine manufacturer's personnel. We presented historical information on intake cooling and compared the various ways to accomplish this cooling. We entertained questions from the floor. We demonstrated the use of Munter's Fill. In general, we tried to convince our audiences that our latest designs had more advantages than disadvantages when compared to our earlier designs.

9. Competitive Materials Used In Evaporative Coolers.

A. The license from Munters is limited solely to evaporative coolers used with gas turbines. A gas turbine like most other combustion engines, burns air and fuel in the production of power. The rate at which this power can be generated

depends on the mass flow rate of air which the compressor portion of the gas turbine unit can deliver to the burners. This, in turn, depends on the density of the air. The evaporative cooler makes it possible to increase the density of the air entering the compressor. It does this by using some of the heat in the air to evaporate water. This, of course, cools the air (just like the skin is cooled when sweat evaporates). It turns out the humidity is increased as well, but the important thing is the density is increased due to the cooling in spite of the humidification.

B. Buffalo Forge presently uses various designs of evaporative coolers for gas turbine applications. These designs may be grouped in three (3) broad categories. These three (3) categories are similar in that they all promote the intimate contact of air and water by producing large amount of interfacial area. They differ in the manner in which this interfacial area is produced. One category produces interfacial area by spreading the water over Munters' Fill (a cross-fluted corrugated fill) which has a lot of exposed surface. Another category spreads the water over networks of fine fibers. The last category simply divides the water up into fine droplets and allows these to fall through a chamber. In all designs, the air is passed through the apparatus thus allowing it to contact the water droplets or the wetted surfaces.

C. The materials used by Buffalo Forge, therefore, include Munters' cross-fluted corrugated fill, fine fibers networks of various descriptions, and spraying systems of various kinds.

D. Buffalo Forge still offers all three (3) categories of evaporative coolers. Spray type apparatus and fine fiber units

are still considered to be competitive. The fact that some of our customers specify cross-fluted corrugated fill is, in my opinion, simply the result of our efforts to promote this material. In the beginning, we found it quite difficult to convince some of them that there were enough advantages to outweigh the disadvantages. We have not given up on either alternative, and, in fact, we are currently examining a fine fiber material which is new to us.

E. Among the benefits accruing to the use of an evaporative cooler are: (1) increased power, (2) particle removal, particulary sodium, (3) sound attenuation, and (4) NOX reduction due to water injection. Among the detriments are (5) thermal shock due to an on-off operation, (6) pressure-drop, (7) carryover of water and deposition of scale when carryover evaporates on blading, and (8) cost. Munter's Fill units can be compared to open-spray and fine-fiber units with respect to each of these points.

1. The power increase is not a function of type of unit. All types can be designed for the same efficiency and, therefore, same power increase.

2. All types remove particles. We have not studied the removal effectiveness of spray or fiber types with respect to salt (sodium test). Fill has an advantage in view of documented testing that has been done.

3. None of the types produces really significant sound attenuation. Since we have done some testing on fill and there is a slight amount this may be an advantage over other types.

4. NOX reduction is related to the amount of water injected. This can be made the same for all types by proper design.

5. Fill type units probably have an advantage with respect to thermal shock because the fill does not dry out or wet as fast as the other types.

6. Pressure drop should be considered in conjunction with size and velocity. Low-velocity air washers may have the advantage, but high-velocity designs would be at a disadvantage with respect to pressure drop, The situation would be reversed with respect to size. The tradeoffs must be considered both between types and within types.

7. Carryover and deposition of scale can be counteracted to some extent by control. The unit regardless of type must be properly designed. Operation during adverse weather can be restricted by automatic or manual control. We have investigated carryover for all types. None completely eliminate carryover. As efficiency is reduced the potential for evaporation of carryover in the exit stream is increased. Both the fiber and fill types may have some advantage over spray type.

8. Cost is a complex subject. First cost is dependent on design and manufacturing efficiency. Operating cost is a function of pressure drop and pumping power. Maintenance cost includes replacement parts and labor. Fill type units might very well have the lowest first and operating costs, but this is not a foregone conclusion. Replacement of fill might be required as often as every five (5) years which could be considered a serious disadvantage compared to spray type.

10. Buffalo Forge Competitors in Evaporative Cooler Market.

The principal competitor of Buffalo in the sale of evaporative coolers for gas turbines is Burgess. Another competitor is American Air Filter Company. But there are various manufacturers of evaporative coolers and air washers, such as Pneumafil, Zurn, McGraw Edison, Alton Manufacturing, and Buensod-Stacey. Several of these are potential competitors and possible entrants into the market for intake coolers for gas turbines.

11. Buffalo Forge Competition With Burgess.

A. Burgess is a very significant competitor of Buffalo in the sale of several products other than evaporative coolers. In the broad evaporative cooler market, Burgess has been an active competitor in all applications for industrial use as well as with gas turbines. Some customers for evaporative coolers for use with turbines are General Electric, Westinghouse, Turbodyne, (Division of Studebaker-Worthington) Turbo Power and Marine Division of United Aircraft, Curtiss-Wright, and Solar (Division of International Harvester).

B. Burgess manufacturers some products for use with gas turbines which Buffalo Forge does not manufacturer, one of which is "silencers". Burgess sometimes sells a customer a "package" including an evaporative cooler and a silencer - Buffalo Forge does not. The affidavit of Ronald I. Yaeger, in support of the Burgess motion states that Burgess also includes a filter assembly in a "package" with an evaporative cooler. Buffalo Forge does not.

C. Since Buffalo Forge does not sell these "packages" it sometimes sells evaporative coolers to a company like Farr Company, which sells manufacturer silencers and filters.

12. Confidential Data.

I have seen exhibit BF-9 containing Buffalo Forge Engineering Bulletin AHD-45, exhibit BF-14, containing Bulletin AHD-60, and exhibit 15, our Bulletin AHD-76. I am only surprised to learn that these were in the files of our competitor Burgess, since each bore the statement "This bulletin is for the confidential use of Buffalo Forge Company employees and representatives".

13. Extension to Gas Absorber-Market.

In May 1974, Buffalo discussed with Munters extension of the license to three (3) areas: (1) geographical extension of the license to the oil producing companies in Africa and Asis; (2) a non-exclusive license in the automotive market; and (3) a license in the gas absorber market. In an exchange of letters, Munters declined to grant any of these requests (Exhibits BF-52, BF-53, and BF-54).

Robert J. Jorgensen

Sworn To Before Me This

12th Day Of December 1975

Notary Public

ROBERT J. COATSWORTH
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 19 76

COPY RECEIVED
Curtis, Van Kirk, Greene & Kafer

DEC 16 1975

☐ By Hand ☐ By Mail
Postmarked .....

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MUNTERS CORPORATION (A Delaware Corporation), Plaintiff, -against- BURGESS INDUSTRIES INCORPORATED (A Delaware Corporation), and BUFFALO FORGE COMPANY (A New York Corporation), Defendants,	CIVIL ACTION NO. 75 Civ. 4622 (CHT) (JUDGE TENNEY)

PLAINTIFF'S ANSWER TO DEFENDANT
BUFFALO FORGE'S INTERROGATORIES

Plaintiff answers the interrogatories of defendant Buffalo Forge as follows:

Interrogatory 1

Set forth each claim of each patent listed in paragraph 7 of the Complaint which constitutes a patent on the product or material described in paragraph 9 of the Complaint.

Answer:

U.S. Patent No.	Claims
3,262,682	1, 2, 3 and 4
3,450,393	1 and 2
3,265,500	NONE
3,395,903	1, 2, 3 and 4
3,574,032	NONE
3,395,900	NONE
3,526,393	NONE
3,599,943	NONE

The listed claims are those which it is believed related to fill of the type now or heretofore used by Buffalo. A further review may lead to more claims being added.

Interrogatory 2

With respect to the cross-fluted corrugated packing material described in paragraph 7 of the Complaint:

A. Describe each use for which such material is suitable.

B. Describe each use, or product in which such material has been used.

C. State (1) the name and address of each person or customer of Munters which has used such material; (2) describe each product in which such material was used; and (3) state the dollar amount of shipments annually to each such person or customer.

D. Describe each material which is competitive with said Munters material, or can be used in place of, or as a substitute for Munters material, or for which Munters Fill is used as a substitute or alternative material.

Answer:

A. and B. Attached hereto are brochures of Munters showing typical uses of the Munters fill. Plaintiff does not know all uses of its fill.

C. This interrogatory is objected to on the grounds that it is burdensome, too broad and therefore irrelevant as now phrased. Munters will advise opposing coursel by letter as to the total sales of Munters and asks that such information be maintained confidential.

D. As presently advised competitive material for fill would be made of aspen wood, redwood, PVC, fiberglass, polyurethane, polyesters and other materials such as various metals. It is believed defendants have more knowledge of the competitive materials than Munters.

Interrogatory 3

State the date when plaintiff was incorporated, and the nature of its business since it was incorporated.

Answer:

About 1965 and its business was primarily the development and production of fill products.

Interrogatory 4

State the relationship between plaintiff and AB Carl Munters described in paragraph 8 of the Complaint.

Answer:

Plaintiff is a licensee and subsidiary of AB Carl Munters.

Interrogatory 5

State whether plaintiff is engaged in any other business than the manufacturer of said material and the sublicensing of said patents.

Answer:

Plaintiff manufactures other products usable in air treatment and cooling applications. Sublicensing is a very minor part of its business.

Interrogatory 6

Describe each license plaintiff has executed other than with Buffalo Forge with respect to said patents, the products manufactured under the license and the method of determining each royalty.

A. State the name and address of each such licensee.

B. State the dollar revenue of said business annually either of sales of the material or other measurement of the value of the material so manufactured.

Answer:

A. The only other sublicensee is Research-Cottrell, Inc., Bound Brook, New Jersey. The area sublicensed to Research-Cottrell relates to sulphur dioxide scrubbers.

B. Plaintiff objects to disclosing the amount of sales of material to Research-Cottrell. However, the sales are greater than sales to either Buffalo Forge or Burgess.

Interrogatory 6 - (Repeated)

State whether plaintiff has been requested to grant any licenses under said patents, or has considered granting any licenses, which were not executed.

Answer:

6 (Repeated). A sublicense was requested but it was not granted.

Interrogatory 7

If the answer to No. 7 is affirmative:

A. Name each person with whom plaintiff has had any contact with respect to granting any such licenses.

B. State the reasons why plaintiff did not execute each such requested license.

Answer

A. Acme Engineering.

B. A management decision was made not to grant any additional sublicenses.

Interrogatory 8

Describe the efforts of plaintiff, and of AB Carl Munters to develop new potential uses and to develop markets in which to sell such material.

Answer:

There is a continuous effort to improve the fill product and acquaint potential users with its advantages.

Interrogatory 9

With respect to the allegations in paragraph 10 of the Complaint:

A. Name each person in Munters and Buffalo Forge who had or exchanged oral or written communications prior to the execution of the sublicense agreement Exhibit 1 annexed to the Complaint.

B. Relate the substance of any oral communication with respect to the experimenting by Buffalo Forge and its intention to experiment further and to develop the application and use of Munters Fill as a new competitive product in the "Product Use Area" as set forth in WHEREAS clause three of Exhibit 1.

C. Attach to your answers copies of any letters or memoranda discussing the subject matter of subparagraph 9(b).

D. State plaintiff's reasons for granting the license set forth in said Exhibit 1, including but not limited to the reasons for limiting the "Product Use Area."

E. Describe the work done by Munters and by Buffalo Forge to develop new potential users for the fill method.

Answer:

A. As presently advised, on behalf of Munters Ulf Nordling, President Munters Corporation, and John A. Mitchell counsel to Munters Corporation, and on behalf of Buffalo Forge Robert Jorgenson, Vice President Buffalo Forge Corporation, and Donald McGrath counsel to Buffalo Forge Corporation.

B. The exact content of each oral communication as presently advised is not recalled. However, Buffalo Forge's representative stated that Buffalo Forge had the greater part of the gas turbine market and the expertise relating thereto. Munters had no experience in that field and at the request of Buffalo Forge granted the sublicense here in issue so that the use of the fill might be developed by the experimentation of Buffalo Forge.

C. As presently advised, no such documents have been located.

D. In known and established markets in which Munters fill was competitive with other materials, it was Munters' policy to grant an implied use license under its product patents to any purchaser of its

fill. When Buffalo Forge told Munters it had an interest in trying to develop the use of Munters fill as a substitute for materials it was using in its evaporative coolers, and desired an exclusive license for the use of the fill in evaporative coolers for a variety of applications, Munters declined to grant it a broad field of use license. However, it did agree to grant one restricted to evaporative coolers used in specific and limited gas turbine applications. The reasons were that this would open up an entirely new market in the "Product Use Area" not previously available to Munters, that Munters did not have the technical knowledge to design an evaporative cooler for such use while Buffalo Forge did, that Munters had no experience in that particular market, while Buffalo Forge was well-established there and had contacts with potential customers, and that Munters could not make the financial investment necessary to develop and design a product for entry into what was a new product market. Also, Buffalo Forge stated it could not undertake the development unless it received an exclusive license for a limited period. Prior to that time no other company had shown any interest in using Munters fill in this market.

E. During the course of Buffalo Forge's development of the new product use, Munters made available its knowledge and expertise relating to the physical and performance characteristics of the fill, and the economics relating to its use. In addition, Munters assisted in solving a problem relating to the use of

the fill which resulted in the filing of an application for a patent relating to the work done jointly by Munters and Buffalo Forge.

Interrogatory 10

With respect to the allegations in paragraph 12 of the Complaint:

A. State the first date of any oral or written communication from Burgess to Munters regarding said fill material.

B. Describe any oral communications between Munters and Burgess personnel prior to the receipt of the first order from Burgess, and attach to your answers copies of any written communications.

C. Describe the products in which Burgess stated it intended to use said material.

D. Describe the products in which Burgess did use said material from the date of the first order to the present time.

E. State the total dollar volume annually of purchases of said material by Burgess.

Answer:

A. The exact date is not known. It is believed to have occurred after the sublicense was granted to Buffalo Forge. The first order from Burgess was for fill for use in an area other than the "Product Use Area".

B. As presently advised no records have been found and there is no present recollection of any oral communications.

C. Heat exchange in industrial humidifiers.

D. General industrial applications and on one occasion in the "Product Use Area". However, Munters had no

knowledge of the intended Burgess use at the time the material was shipped.

E. Munters objects to providing this information except to counsel who must agree to keep it confidential.

Interrogatory 11

With respect to the allegations in paragraphs 13, 14, and 15 of the Complaint:

A. State the basis of your allegations that Burgess had used Munters' fill material in the Product Use Area for which Buffalo Forge is exclusively licensed.

B. Describe the manner in which, and the date when Munters informed Burgess of the Buffalo Forge license; attach to your answers copies of any such written communications between Munters and Burgess.

Answer:

A. Information received from Buffalo Forge and thereafter confirmed by Burgess.

B. Nordling letter of March 25, 1974 to R.J. Thompson; Mitchell letter of June 7, 1974 to G. Fazakerly. A search of the files is continuing to be made and if any earlier correspondence is found, defendants will be so advised.

COMMENT

The above answers and objections have been prepared by counsel and are being executed by counsel as an agent in order to expedite matters as requested by counsel for Buffalo Forge.

Dated: December 16, 1975.

MUNTERS CORPORATION

By John A. Mitchell

John A. Mitchell
Plaintiff's Attorney
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COPY

U.S. DISTRICT COURT
FILED
JAN 19 1976
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MUNTERS CORPORATION
(A Delaware Corporation),

Plaintiff,

-against-

BURGESS INDUSTRIES INCORPORATED
(A Delaware Corporation)
and
BUFFALO FORGE COMPANY
(A New York Corporation),

Defendants.

75 Civ. 4622 (CHT)

#43747

MEMORANDUM

TENNEY, J.

The instant case was commenced by Munters Corporation ("Munters") against two of its customers, Burgess Industries Incorporated ("Burgess") and Buffalo Forge Company ("Buffalo Forge"). Munters is a manufacturer of material known as "Munters Media" or "Munters Fill" which is used in the production of air conditioning apparatus. Munters has requested a declaratory judgment, under 28 U.S.C. §§ 2201 and 2202, setting forth its rights and obligations under an agreement with Buffalo Forge in order to settle a dispute between the three companies arising under the antitrust laws, 15 U.S.C. §§ 1, 2, 14 and 15. Defendant Burgess has moved for a preliminary injunction ordering Munters to supply it with Munters Media during the pendency of the main action. For the reasons set forth below, the Court

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grants the motion insofar as it enjoins adherence to the agreement with Buffalo Forge pending resolution of the antitrust dispute.

Background

Munters is the licensee of certain patents relating to cross-fluted, corrugated packing material having a variety of uses, including use as a filler in liquid gas contact apparatus, cooling towers and evaporative coolers. (Complaint ¶¶ 4, 8, 9). In October 1972, Munters executed an agreement with Buffalo Forge, a manufacturer of primarily industrial equipment, whereby Munters granted Buffalo Forge a sublicense for the exclusive use and sale of Munters Media in the production of evaporative cooling systems for gas turbine engines and related equipment.[1/] Munters continued to sell Munters Media to other customers for uses presumably other than that in the restriction granted to Buffalo Forge. Burgess, a manufacturer of diverse industrial equipment, is also a customer of Munters purchasing Munters Media. Burgess and Buffalo Forge appear to be the only suppliers of evaporative coolers for gas turbine applications, and presently compete with each other in the sales of such equipment.[2/] Burgess has alleged that most customers for the cooling systems specify use of Munters Media as a component in the system. At Buffalo Forge's demand in accordance with their agreement, Munters demanded that Burgess affix a written commit-

ment to its purchase orders for Munters Media, promising that it would not use the fill in the production of evaporative cooling apparatus for gas turbine equipment. (Complaint ¶ 14). Burgess has refused to sign the commitment and Munters has refused further delivery of its Media to Burgess.

Munters' complaint recounts the charge by Burgess that the sublicense agreement between Munters and Buffalo Forge is an invalid field of use restriction under patent and antitrust laws and an illegal attempt to tie patented Munters Fill to unpatented apparatus, i.e., gas turbines, thereby violating antitrust laws. Buffalo Forge, on the other hand, contends that the agreement is a valid one and has threatened to sue Munters for breach of the agreement if it sells to Burgess. Munters claims that it is therefore threatened with lawsuits by both customers and prays for a declaration that the sublicense agreement is valid and that it may refuse to sell Media to Burgess in reliance upon the agreement.

Jurisdiction

In order to entertain the motion for a preliminary injunction by Burgess, the Court must first determine whether it has jurisdiction over the claim for a declaratory judgment by Munters. It is well settled that in a declaratory action an actual case or controversy must be presented, although accomplished injury or irreparable harm need not be alleged. 6A

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Moore's Federal Practice ¶¶ 57.11, 57.22 (2d ed. 1974). Although neither Burgess nor Buffalo Forge had actually instituted proceedings against Munters at the time Munters brought its action, it is sufficient for the purpose of jurisdiction that both customers had threatened Munters with lawsuits involving the same controversial agreement. The United States Court of Appeals for the Second Circuit held in a declaratory suit that a party was not infringing upon another party's patent despite the fact that the patentee had not yet instituted an infringement action against him. The Second Circuit explained that

> "it is clear that a justiciable controversy is present if defendant, the patentee, has charged plaintiff with infringement, or has threatened plaintiff with an infringement suit, either directly or indirectly." Miller v. Olin Mathieson Chem. Corp., 404 F.2d 501, 504 (2d Cir. 1968).

The court reiterated Professor Moore's statement that the requirement that there be a "charge of infringement" has been accorded liberal interpretation. Id., citing 6A Moore's Federal Practice ¶ 57.20, at 3119. Upon the allegations before the Court, it is apparent that a real controversy exists between the parties calling for interpretation of the antitrust laws, Sherman Act §§ 1 and 2,[3/] despite the fact that neither Burgess nor Buffalo Forge has initiated independent proceedings against Munters. Certainly Burgess' motion for a preliminary injunction indicates the authenticity of the conflict and the ripeness of this case for judicial resolution.

Finding sufficient jurisdiction over the underlying com-

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plaint, the Court may proceed with consideration of defendant Burgess' motion for a preliminary injunction.

A preliminary injunction has repeatedly been recognized in this circuit as an extraordinary remedy. See Gulf & Western Industries, Inc. v. The Great Atlantic and Pacific Tea Company, Inc., 476 F.2d 687, 692 (2d Cir. 1973); Checker Motors Corp. v. Chrysler Corp., 405 F.2d 319 (2d Cir.), cert. denied, 394 U.S. 899 (1969). Application for this remedy is addressed to the discretion of the district court. Yakus v. United States, 321 U.S. 414, 440 (1944); 7 Moore's Federal Practice ¶ 65.04[2].

Standard for Issuance
of a Preliminary Injunction

The standard for issuance of a preliminary injunction was recently enunciated by the Second Circuit as follows:

> "The standard factors which the court now considers upon an application for a preliminary injunction are well known: (1) clear likelihood of success on the law and the facts then available and possible irreparable injury, or (2) sufficiently serious questions on the merits making them fair ground for litigation and a balance of the equities tipping decidedly in favor of preliminary relief." Columbia Pictures Industries, Inc. v. American Broadcasting Companies, Inc., 501 F.2d 894, 897 (2d Cir. 1974).

See also San Filippo v. United Brotherhood of Carpenters and Joiners of America, No. 75-7394 at 6392-93 (2d Cir., Oct. 28, 1975); Sonesta International Hotels Corp. v. Wellington Associates, 483 F.2d 247, 250 (2d Cir. 1973); Gulf & Western Industries, Inc. v. The Great Atlantic and Pacific Tea Company, supra, 476 F.2d at 692-93; Dino De Laurentiis Cinematografica,

S.p.A. v. D-150, Inc., 366 F.2d 373, 375 (2d Cir. 1966).

The Probability of
Success on the Merits

Movant Burgess contends that the sublicense agreement between Munters and Buffalo Forge violates Sections 1 and 2 of the Sherman Antitrust Act and constitutes an abuse of patent authority by Munters. Specifically, Burgess argues that the agreement amounts to an unlawful concerted refusal to deal, a per se antitrust violation under Klors, Inc. v. Broadway-Hale Stores, Inc., 359 U.S. 207 (1959) and United States v. General Motors Corp., 384 U.S. 127, 146 (1966). In addition, the movant characterizes the agreement as an unlawful restriction by Munters on its customers' resales, constituting a per se violation of the doctrine set forth in United States v. Arnold Schwinn & Co., 388 U.S. 365 (1967); United States v. Glaxo Group Limited, 302 F. Supp. 1 (D.D.C. 1969) (granting partial summary judgment on the merits), 328 F. Supp. 709 (1971) (final judgment), reversed on issue of remedies, 410 U.S. 52 (1972). Finally, Burgess contends that the agreement surpasses the field of use restrictions permitted patent licensees under General Talking Pictures Corp. v. Western Electric Co., 304 U.S. 175, aff'd on rehearing, 305 U.S. 124 (1938). Munters, on the other hand, contends that the sublicense is a valid agreement under the law established in General Talking Pictures. Similarly, Buffalo Forge counters

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that the restrictive agreement is valid under General Talking Pictures.

Field of use restrictions incident to patent licenses have been the subject of numerous commentaries. See, e.g., Adelman & Juenger, Patent-Antitrust: Patent Dynamics and Field-of-Use Licensing, 50 N.Y.U. L. Rev. 273 (1975); Handler, Address to Mid-Winter Stated Meeting of the American Patent Law Association, 1972 Am. Pat. L. Ass'n Bull. 119 (1972); Gibbons, Field Restrictions in Patent Transactions: Economic Discrimination and Restraint of Competition, 66 Colum. L. Rev. 423 (1966); Heyman, Patent Licensing and the Antitrust Laws--A Reappraisal at the Close of the Decade, 14 Antitrust Bull. 537 (1969); Note, The Patent-Antitrust Balance: Proposals for Change, 17 Vill. L. Rev. 463 (1972). The issues presented in the adjudication of an antitrust action abound with complexities and intricacies which call for extensive factual examination. The analysis is more demanding where, as here, it involves the legitimacy of commercial restrictions which allegedly inhere in the grant of patent licenses. It is difficult to generalize the principles applicable in antitrust cases other than to say that naked restraints of trade are generally unlawful and that cases involving the antitrust and patent laws are particularly dependent upon fine line factual distinctions. Such cases are best resolved after full-scale evidentiary hearings. See, e.g., White Motor Co. v. United States, 372 U.S. 253, 261 (1963); Sandura

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v. F.T.C., 339 F.2d 847 (6th Cir. 1964); Snap-On Tools Corp. v. F.T.C., 321 F.2d 825 (7th Cir. 1963); Royal Crown Bottling Co. v. Royal Crown Cola Co., 358 F. Supp. 290, 295 (D. Colo. 1972). The Court therefore turns to consideration of the alternative standard for issuance of a preliminary injunction.

The Merits Present
Fair Ground for Litigation

Although the Court cannot determine the probability of success on the merits from the abbreviated hearing on this motion, it is convinced that the questions raised are serious enough to present fair ground for litigation, in accordance with the alternate standard pronounced in Columbia Pictures Industries, Inc. v. American Broadcasting Companies, Inc., supra, 501 F.2d at 897. See also San Filippo v. United Brotherhood of Carpenters and Joiners of America, supra, No. 75-7394; Gulf & Western Industries, Inc. v. The Great Atlantic and Pacific Tea Company, supra, 476 F.2d at 692-93; Checker Motors Corp. v. Chrysler Corp., supra, 405 F.2d at 323; Unicon Management Corp. v. Koppers Co., 366 F.2d 199, 205 (2d Cir. 1966); Dino De Laurentiis Cinematografica, S.p.A. v. D-150, Inc., supra, 366 F.2d at 375; Hamilton Watch Co. v. Benrus Watch Co., 206 F.2d 738, 740 (2d Cir. 1953); Supermarket Services, Inc. v. Hartz Mountain Corp., 382 F. Supp. 1248, 1254-55 (S.D.N.Y. 1974). The questions raised by this motion, serious and substantial enough to require further delib-

erate investigation, are as follows;

(1) Whether the agreement between Munters and Buffalo Forge, characterized as a patent sub-license, in fact represents a valid exercise of the monopoly power by a patent licensee, namely a field of use restriction; if not,

(2) Whether it constitutes a vertically integrated concerted action in restraint of trade, more particularly, (a) an unlawful attempt to tie a vendor's patented product (Munters Media) to a vendee's unpatented one (Buffalo Forge's evaporative cooler for gas turbines), or (b) a refusal to deal in violation of Section 1 of the Sherman Act.

Balancing the Hardships

Munters has admitted that it will not be injured by the granting of this motion. (Pl.'s Memo. in Reply to Motion for Prelim. Inj. at 5). Burgess is in a quite different position. If the agreement is upheld Burgess will have to cancel the bids it has already accepted from the four major industrial customers in the market for evaporative air coolers. A denial of Burgess' motion will produce the same effect at present, causing a significant loss of current business and, more importantly, irreparable injury to its goodwill in the industry. Without comment-

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ing on the business acumen of Burgess in obligating itself to customers before removing impediments to its supply of resource materials or the possible commercial exigencies behind that decision, it is clear that the likely long-lasting harm to Burgess' goodwill outweighs possible harm to Munters or Buffalo Forge. If Buffalo Forge ultimately wins, it will simply regain that part of the market which is foreclosed by the preliminary injunction; if it ultimately loses, then no legal injury is suffered as a result of the injunction.

The antitrust issue in this case presents fair ground for extensive analysis and further litigation, and it appears that any injury to Munters or Buffalo Forge resulting from a preliminary injunction suspending enforcement of their sublicense agreement would not outweigh the overbearing injury that Burgess would suffer if its request for preliminary relief were denied. Therefore, the Court enjoins plaintiff Munters Corporation, its agents, servants and attorneys, and all persons in active concert and participation with it who receive actual notice by personal service or otherwise, including defendant Buffalo Forge Company, from:

(1) Refusing to sell Munters Media, also known as Munters Fill, on the basis of the entitled sublicense agreement between Munters and Buffalo Forge.

(2) Extracting a written or other commitment from

Burgess as a condition of sale, obligating it to restrict its utilization of Munters Media or Munters Fill from any particular product use area.

Accordingly, an injunction will issue pendente lite upon the posting of a bond in the sum of $25,000 by defendant Burgess Industries Incorporated, to secure the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined. Submit order in conformity herewith.

Dated: New York, New York
January 19, 1976

CHARLES H. TENNEY

U.S.D.J.

0105

MUNTERS CORPORATION,
Plaintiff,

-against-

BURGESS INDUSTRIES INCORPORATED and BUFFALO FORGE COMPANY,
Defendants,

75 Civ. 4622 (CHT)

FOOTNOTES

1/ The Agreement between Munters and Buffalo Forge states, in pertinent part, as follows:

"ARTICLE II: Grant of License

1. Subject to and to be effective when Buffalo shall have established the use of Munters' Fill as a competitive product for use in the Product Use Area, Munters Florida grants to Buffalo, under the terms of this Agreement, the exclusive right and sub-license under the Fill Patents to use and sell Munters' Fill solely for use in the Product Use Area throughout the Exclusive Territory, and to sub-license others to use such licensed Munters' Fill obtained from Buffalo solely for use in the Product Use Area throughout the Exclusive Territory. Munters Florida reserves all other rights it may have under the Fill Patents for uses of Munters' Fill not within the Product Use Area. Nothing in this Agreement shall be interpreted or construed to grant to Buffalo or its customers any rights whatsoever to manufacture Munters' Fill.

. . . .

3. Munters Florida shall do no act which will interfere or restrict Buffalo's quiet enjoyment of the exclusive right and sub-license granted herein, such as, for example, Munters Florida will not knowingly sell Munters' Fill to purchasers whose intended use falls within the Product Use Area.

. . . .

ARTICLE III: Notice of License

. . . .

2. In the event that Buffalo shall bring to the

attention of Munters Florida the fact that a purchaser, other than Buffalo, of Munters' Fill from Munters Florida, has used or sold said fill for use in the Product Use Area in the Exclusive Territory, Munters shall promptly inform said customer of the exclusive use, sub-license and/or supply agreement granted to Buffalo herein. A true and correct copy of said written notice shall be promptly sent to Buffalo.

ARTICLE IV: Purchase Requirement

1. . . . Buffalo will use Munters' Fill in the Product Use Area in the Exclusive Territory except when its customers desire other types of fill to be used."

2/ The major customers for evaporative airspray cooling systems suitable for gas turbine equipment are: General Electric Corporation, Westinghouse Corporation, Solar Division of International Harvester Company, and Sui Northern Natural Gas Company.

3/ Sherman Act § 1, 15 U.S.C. § 1 (1970), states:

"Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal...."

Sherman Act § 2, 15 U.S.C. § 2 (1970), states:

"Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor...."

IN THE UNITED STATES DISTRICT COURT S.D.N.Y.

FOR THE SOUTHERN DISTRICT OF NEW YORK

MUNTERS CORPORATION (A Delaware Corporation),	:	
Plaintiff,	:	CIVIL ACTION NO.
v.	:	75 Civ. 4622 (CHT)
BURGESS INDUSTRIES INCORPORATED (A Delaware Corporation) and BUFFALO FORGE COMPANY (A New York Corporation),	:	JUDGE TENNEY
Defendants.	:	

ORDER AND PRELIMINARY INJUNCTION

Defendant Burgess Industries Incorporated having moved this Court for the issuance of an injunction pendente lite enjoining plaintiff Munters Corporation and defendant Buffalo Forge Company, and the motion having been briefed by each of the parties and the Court having on December 16, 1975 heard oral argument in support of and in opposition to the motion; and,

The Court having made findings of fact and conclusions of law embodied in the Court's Memorandum dated and filed January 19, 1976, herein incorporated by reference;

NOW THEREFORE, IT IS HEREBY ORDERED that plaintiff Munters Corporation, its agents, servants and attorneys, and all persons in active concert and participation with it who receive actual notice by personal service or otherwise, including

defendant Buffalo Forge Company, be and they hereby are enjoined pendente lite from

(1) Refusing to sell Munters Media, also known as Munters Fill, on the basis of the sub-license agreement entered into between Munters Corporation and Buffalo Forge Company;

(2) Extracting a written or other commitment from Burgess Industries Incorporated as a condition of sale, obligating it to restrict its utilization of Munters Media or Munters Fill from any particular product use area.

IT IS FURTHER ORDERED that the injunction pendente lite provided by this Order will issue upon the posting of a bond in the sum of $25,000 by defendant Burgess Industries Incorporated, to secure the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined.

Dated: New York, New York
January 26, 1976

Charles H. Tenney
United States District Judge

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By _____
Deputy Clerk

INA

INSURANCE COMPANY OF NORTH AMERICA, PHILADELPHIA, PENNSYLVANIA

United States District Court
Southern District of New York

Munters Corporation (A Delaware Corporation), Plaintiff, vs. Burgess Industries Incorporated (A Delaware Corporation) and Buffalo Forge Company (A New York Corporation), Defendants.	Civil Action No. 75 Civ. 4622 (CHT) Undertaking on Preliminary Injunction

The above named defendant, Burgess Industries Incorporated, having applied to one of the Judges of this Court for a preliminary injunction in the above entitled action, restraining and enjoining the plaintiff Munters Corporation, its agents, servants and attorneys, and all persons in active concert and participation with it who receive actual notice by personal service or otherwise, including defendant Buffalo Forge Company, be and they hereby are enjoined pendente lite from

(1) Refusing to sell Munters Media, also known as Munters Fill, on the basis of the sublicense agreement entered into between Munters Corporation and Buffalo Forge Company;

(2) Extracting a written or other commitment from Burgess Industries Incorporated as a condition of sale, obligating it to restrict its utilization of Munters Media or Munters Fill from any particular product use area.

NOW, THEREFORE, pursuant to the Statute in such case made and provided, the Insurance Company of North America, A Pennsylvania Corporation, having an office and usual place of business at 79 John Street, in the City of New York, hereby undertakes in the sum of $25,000.00, that the defendant Burgess Industries Incorporated will pay to plaintiff Munters Corporation or defendant Buffalo Forge Company so enjoined, such damages and costs, not exceeding the before mentioned sum, as they may sustain by reason of the injunction, if the Court finally decides that the defendant Burgess Industries Incorporated is not entitled thereto.

Dated: January 23, 1976.

0108

INSURANCE COMPANY OF NORTH AMERICA

By: Leonard Lueder
Attorney-in-Fact

0109

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MUNTERS CORPORATION,

Plaintiff,

v.

BURGESS INDUSTRIES INCORPORATED and BUFFALO FORGE COMPANY,

Defendants.

75 Civ. 4622 (CHT)

ORDER TO SHOW CAUSE

Upon the decision of this Court, dated January 19, 1976, the preliminary injunction entered on January 26, 1976, the Notice of Appeal dated February 17, 1976, the attached affidavits of Robert Jorgensen and Joseph W. Burns and memorandum of law, and upon the basis of all prior proceedings had herein, it is

ORDERED, that defendant Burgess Industries, Inc. show cause before me on the 2 day of March, 1976 at 10:30 o'clock in the ~~for~~ noon, in Room 1105 of the United States Court House, Foley Square, New York, New York, (1) why an order should not be entered pursuant to F.R.Civ.P. Rule 62(c) to suspend and stay the preliminary injunction during the pendency of the appeal, and (2) why an order should not be entered pursuant to Rule 65(c) to provide for periodic increases in the amount of the bond posted in this action by defendant Burgess Industries, Inc.

IT IS FURTHER ORDERED, that personal service of this Order and the papers upon which it is granted upon counsel of record for plaintiff Munters Coporation and defendant Burgess Industries, Inc. by 5 o'clock in the afternoon on February 26, 1976, shall be good and sufficient service.

Dated: New York, N. Y.
February 25, 1976

Charles H. Tenney
CHARLES H. TENNEY
U.S.D.J.

0110

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HUNTERS CORPORATION,	:	75 Civ. No. 4622 (CHT)
Plaintiff,	:	
vs.	:	AFFIDAVIT OF JOSEPH W. BURNS III SUPPORT OF ORDER TO SHOW CAUSE
BURGESS INDUSTRIES INCORPORATED and BUFFALO FORGE COMPANY,	:	
Defendants.	:	

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JOSEPH W. BURNS, being duly sworn, deposes and says:

1. I am a member of the firm of Burns, Van Kirk, Greene & Kafer, 521 Fifth Avenue, New York, New York 10017, attorneys for the defendant, Buffalo Forge Company ("Buffalo Forge"), and I am fully familiar with the proceedings of this matter.

2. I make this affidavit in support of Buffalo Forge's application for an order directing defendant Burgess Industries, Inc. ("Burgess") to show cause why (1) an order should not be entered pursuant to Rule 62(c) to suspend and stay the preliminary injunction during the pendency of the appeal, and (2) an order should not be entered to provide for periodic increases in the amount of the security pursuant to Rule 65(c).

3. At the hearing on December 18, 1975, of the Burgess motion for a preliminary injunction, the Court stated that if it granted the motion, it could schedule a trial on the merits in March, 1976. I wrote a letter to Judge Tenny dated February 3, 1976 (attached hereto as Exhibit A), to confirm this schedule.

4. Counsel for Hunters and Burgess advised the Court of their readiness for an early trial (Exhibits B and C attached hereto).

5. Judge Tenny's letter, dated February 10, 1976, advised that he could not schedule this case for trial "in the reasonably foreseeable future." (Exhibit D attached hereto) In view of this statement, Buffalo Forge filed a Notice of Appeal on February 17, 1976.

6. One of Burgess' counsel, Bryan Medlock, telephoned Donald G. McGrath, general counsel for Buffalo Forge, and asked if he was going to continue the lawsuit in view of the $25,000. security which he claimed limits the maximum amount of damages Buffalo Forge can receive in this action. This legal contention was something new to Buffalo Forge, and they felt compelled both to appeal and to move in this Court for a change in the order with respect to security. (Exhibit E attached hereto).

7. The reason this application is made for an order to show cause instead of proceeding by Notice of Motion is that "time is of the essence." No previous application has been made for the relief requested herein.

WHEREFORE, deponent prays that this Court order defendant Burgess to show cause why (1) an order should not be entered pursuant to Rule 62 (c) to suspend and stay the preliminary injunction during the pendency of the appeal, and (2) an order should not be entered to provide for periodic increases in the amount of the security.

Joseph W. Burns

Joseph W. Burns

Sworn to before me this
25th day of February, 1976

Florence R. LeSauvage

FLORENCE R. LE SAUVAGE
Notary Public, State of New York
No. 31 231/150
Qualified in New York County
Commission Expires March 30, 1977

BURNS, VAN KIRK, GREENE & KAFER
521 FIFTH AVENUE
NEW YORK, N.Y. 10017
(212) 972 0500
CABLE "AUBURATH"

ALBERT R. JUBE (1924-1970)
BERNARD M. ALTHOFF
LAWRENCE P. J. BONAGUIDI
JOSEPH W. BURNS
DONALD E. BYRNE
WILLIAM D. GREENE
DONALD C. HAIN
HOWARD G. KAFER
JOHN P. KEEGAN
ALAN PALWICK
BLACKWELL SMITH
THOMAS J. UNGERLAND
W. PHILIP VAN KIRK

OSCAR J. HEIG
MARTIN J. NEVILLE
GARY M. LACHMAN
STEPHEN VASAK, JR.*
* NOT ADMITTED IN NEW YORK

NEWARK, NEW JERSEY 07102
24 COMMERCE STREET
(201) 622-1437

PAUL J. CHRISTIANSEN
JOHN P. KEEGAN
STEPHEN VASAK, JR.

OF COUNSEL
PAUL N. STERNBACH
HERBERT J. SEAKWOOD

February 3, 1976

COPY

The Honorable Charles H. Tenney
United States District Court
United States Court House
Foley Square
New York, N. Y. 10007

Re: Munters Corporation v. Burgess Industries Incorporated and Buffalo Forge Company
75 Civ. 4622 (CHT)

Dear Judge Tenney:

During the oral argument of the Burgess Industries' motion for preliminary injunction on December 18, 1975 you stated that you believed you could schedule the trial of the case for late March or early April, 1976.

The issue of an early trial date is critical to my client's determination of whether or not to appeal from the issuance of the preliminary injunction which was entered on January 26, 1976. It is my recollection that when you discussed a possible date for trial, counsel indicated that the case could be tried in about one week.

I would appreciate your advising whether or not you can schedule this case for trial before the end of April, 1976.

Respectfully submitted

Joseph W. Burns

JWB:ma

cc: John C. Vassil, Esq.
John A. Mitchell, Esq.

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EXHIBIT A

CURTIS, MORRIS & SAFFORD, P. C.

530 FIFTH AVENUE

NEW YORK, NEW YORK 10036

HA[illegible]OLD L. STULTS +
AR[illegible]UR V. SMITH
GI[illegible]ON K. LISTER
H[illegible]RY W. KOSTER
LE[illegible]S H. ESLINGER
JO[illegible]N A. MITCHELL
D[illegible]ALD R. BENTZ
A[illegible] SINDERBRAND
L[illegible]. ROBINSON, JR.
G[illegible]GOR N. NEFF
A[illegible]HOMAS S. SAFFORD
[illegible]D A. PARTOYAN
F[illegible]A. KEIRE
D[illegible]Y EVANS
L[illegible]RD J. SANTISI
F[illegible] CARVELLAS
C[illegible]LD P. GILLETTE
P[illegible]UALE A. RAZZANO
W[illegible]IAM S. FROMMER

+ MEMBER D.C. BAR ONLY

TRUMAN S. SAFFORD
STUART A. WHITE
OF COUNSEL

EDWARD G. CURTIS
(1868-1970)
DANIEL L. MORRIS
(1890-1966)

TELEPHONE
(212) MU 2-7171

CABLE ADDRESS
CUMOSA

TELEX
222517 CUMS

February 4, 1976

The Honorable Charles H. Tenney
United States District Court
United States Court House
Foley Square
New York, New York 10007

Re: Munters Corporation v. Burgess Industries Incorporated and Buffalo Forge Company
75 Civ. 4622 (CHT) - Our File 31068

Dear Judge Tenney:

Today I received a copy of Mr. Burns' letter of February 3, 1976 to you. On behalf of Munters there is no objection to a trial early in April, 1976. I do have a trial commencing early in March in San Francisco and a hearing in an interparties matter in the Patent Office now set for March 30, 1976. Accordingly, the March date would not be convenient for Munters.

As I believe I have so advised counsel for the defendants, Munters' position at the trial will be to merely introduce the license agreement which is the subject of the present dispute into evidence and then leave each of the defendants to present such proof as it desires to support its position.

Respectfully,

John A. Mitchell
One of The Attorneys For Munters Corp

JAM:mm
cc: John C. Vassil, Esq.
Joseph W. Burns, Esq.
V. Bryan Medlock, Jr., Esq.

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EXHIBIT B

(23)

MORGAN, FINNEGAN, PINE, FOLEY & LEE
ATTORNEYS AT LAW
345 PARK AVENUE
NEW YORK, NEW YORK 10022

JOHN D. MORGAN
1893-1939
HOBART N. DURHAM
1930-1966

CABLE FINDURPINE NEW YORK
TEL. (212) 758-4800
TELEX: 421792

COUNSEL
RALPH M. WATSON

GEORGE . FINNEGAN, JR.
GRANVI M. PINE
JOHN C OLEY
JEROME D. LEE
THOMAS . DOWLING
WARRE . ROTERT
JOHN A AZ
JOHN C. SSIL
ALFRED EWERT
DAVID H FFFER
HARRY C ARCUS
ROBERT . PAULSON
GEORG . HOARE, JR.
THOMA . GIBSON
EDWAR HEDMAN
STEPH . SMITH
KURT E. HTER
J. ROB DAILEY
JAMES WELCH
EUGEN DROZ
JAMES COSTIGAN
HAROLD DRUMM
ROCCO BARRESE
ARNOL ADY
JOHN L ELCH
JOHN F WEENEY
CHRIST HER A. HUGHES
WILLIA FEILER
RICHA . BENNETT
ALFRED . HEMINGWAY, JR.
RICHAR J. MAZZA

February 5, 1976

Honorable Charles H. Tenney
United States District Court
for the Southern District of New York
United States Court House
Room 1904
Foley Square
New York, New York

Munters Corporation v. Burgess Industries
Incorporated and Buffalo Forge Company
Civil Action No. 75 Civ. 4622

Dear Judge Tenney:

We have received copies of letters to you sent by Mr. Burns on February 3, 1976 and Mr. Mitchell on February 4, 1976. We have also obtained the views of V. Bryan Medlock, Jr., Esq. of Dallas, Texas, trial counsel for Burgess Industries Incorporated, concerning a possible trial of this action in April, 1976.

Although Burgess Industries Incorporated is desirous of an early trial, for the reasons set forth below, it requests that a trial not be set prior to May 3, 1976.

Mr. Medlock advises me that he is scheduled to try the consolidated actions of Waples Platters and Great Western Foods Co. v. Kraftco Corp. (C.A. 4-75-113) and Waples Platters and Great Western Foods Co. v. General Foods Corp. (C.A. 4-75-112) commencing on April 19, 1976 in the United States District Court, Northern District of Texas, Ft. Worth division. Discovery has not been completed in those actions and some time will be spent during the months of February and March by counsel for all the parties in those actions in completing discovery.

EXHIBIT C

The position of defendant Burgess Industries Incorporated is apparently different from that of plaintiff Munters Corporation and defendant Buffalo Forge Company. Munters Corporation, according to Mr. Mitchell, will not need any discovery. Defendant Buffalo Forge Company took its discovery prior to the hearing on the Burgess Industries Incorporated motion for preliminary injunction. Burgess Industries Incorporated has not had any discovery and will require discovery of the other parties.

The Burgess Industries Incorporated discovery will be in the form of Rule 33 interrogatories, Rule 34 document demands and a limited number of depositions. We are informed that the discovery by way of interrogatories and document demands will commence in the very near future.

We respectfully request the Court to consider the present trial schedule of Mr. Medlock and the discovery required by Burgess Industries Incorporated in this action at such time as it gives consideration to the setting of an early trial date.

Very truly yours,

John C. Vassil

JCV/ed

cc: John A. Mitchell, Esq.
Joseph W. Burns, Esq.
V. Bryan Medlock, Jr., Esq.

UNITED STATES DISTRICT COURT
UNITED STATES COURTHOUSE
NEW YORK, N. Y. 10007

February 10, 1976

CHAMBERS OF
JUDGE CHARLES H. TENNEY

Joseph W. Burns, Esq.
Burns, Van Kirk, Greene & Kafer
521 Fifth Avenue
New York, N.Y. 10017

Re: Munters Corporation v. Burgess Industries Incorporated and Buffalo Forge Company
75 Civ. 4622 (CHT)

Dear Mr. Burns:

I am in receipt of your letter of February 3, 1976, in which you make inquiry regarding my trial calendar and the prospect of bringing this case to trial in March or April of 1976.

At present, my trial commitments are such that it would be impossible for me to reach this matter for trial in March or April of this year or for that matter in the reasonably foreseeable future. Therefore, I urge you to seek your appellate remedies with dispatch as regards the issuance of a preliminary injunction in this case.

Please be assured that I am fully cognizant of the needs and desires of all parties to bring this case to trial and will do all that I can to see that the earliest date possible is assigned to the case. However, at the same time, I must repeat that you should seek appellate scrutiny of the decision on the preliminary injunction, if such is your wish, without delay.

Sincerely yours,

CHARLES H. TENNEY
United States District Judge
for the Southern District of New York

cc: John C. Vassil, Esq.
John A. Mitchell, Esq.

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EXHIBIT D

McGRATH, MEYER, LIEBERMAN & LIPP
ATTORNEYS AT LAW
SUITE 1400 STATLER HILTON BUILDING
107 DELAWARE AVENUE
BUFFALO, NEW YORK 14202

ROBERT E. LIPP
ARNOLD T. LIEBERMAN
HOWARD L. MEYER
DONALD G. McGRATH
ANTHONY D. ABBARNO

(716) 856-6000

February 9, 1976

Joseph W. Burns, Esq.
Burns, Van Kirk, Greene & Kafer
521 Fifth Avenue
New York, New York 10017

Re: Munters vs. Burgess Industries and
Buffalo Forge Company
Our File - 196 BF

Dear Joe:

The other day Bryan Medlock called to inquire if we were going to proceed with this matter. After discussion with the client I informed him that we are.

During the course of the discussion he raised the point that Burgess' maximum exposure or conversely Buffalo's maximum damage claim during the pendency of the action is the $25,000 amount of the bond. He indicated that this is the attitude of the second circuit. If that is the case then I think we should move or appeal whichever is appropriate on the point of the bond being insufficient to cover Buffalo's total potential damages as a result of the injunction. Please proceed accordingly.

Sincerely yours,

Donald G. McGrath

DGM;cew

EXHIBIT F

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- X

MUNTERS CORPORATION, :

Plaintiff, : 75 Civ. No. 4622 (CHT)

against : AFFIDAVIT OF ROBERT JORGENSEN

BURGESS INDUSTRIES INCORPORATED, :

and :

BUFFALO FORGE COMPANY, :

Defendants.: :

- X

STATE OF NEW YORK)
: ss.:
COUNTY OF ERIE)

ROBERT JORGENSEN, Being duly sworn, deposes and says:

1. I am the Chief Engineer of the Air Handling Division of Buffalo Forge Company, and make this Affidavit in support of its motion for a stay of the preliminary injunction pending appeal.

2. Burgess stated in the Ronald J. Yaeger Affidavit dated November 12, 1975 in support of its motion for a preliminary injunction that its "good will" would be irreparably damaged if it could not supply Munters media evaporative coolers to fill purchase orders it had already received from Solar, Westinghouse, General Electric and SUI Northern Natural

Gas Company totalling approximately $230,000. In Exhibit BF-34 Yaeger set forth the dollar amount of each order as follows:

EXHIBIT BF-34

"1.	Solar	$10,965
2.	Westinghouse	21,445
3.	Westinghouse	29,965
4.	General Electric	68,291
		68,291
		136,582
5.	SUI Northern Natural Gas. Co.	27,300
		$226,257

Items 2, 3 and 5 are retrofit jobs which do not have enclosures, plenums, transitions, pumps or electrical equipment. Existing spray type Dynel coolers are being gutted and Munters media installed in place of the Dynel cells."

3. It is impossible for me as a businessman to see in what way or manner the "good will" of Burgess could be injured irreparably by not being able to sell evaporative coolers containing Munters Fill for gas turbine applications during the pendency of this action. I cannot understand the legal concept which reached the conclusion that Burgess' good will would be irreparably injured, but to my mind, the facts as I know them indicate the good will of Buffalo Forge will be irreparably injured.

4. Let me start with Westinghouse and General Electric, which are the two major customers for these coolers. Incidentally, it should be noted that they are not the ultimate users or ultimate customers. Westinghouse and General Electric sell the gas turbine equipment to public utility companies. It is very important to Buffalo Forge and Burgess to con-

vince Westinghouse and General Electric engineers of the merits of their products, as their recommendations have considerable influence on their customers, the public utilities.

5. Westinghouse has two divisions, which purchase evaporative coolers for gas turbines, one at Philadelphia, the other at Pittsburgh. For many, many years, Burgess has been preferred by Westinghouse as its supplier. This was stated by Yaeger in his deposition. Most of the evaporative coolers purchased by Westinghouse are purchased by the Philadelphia division. Buffalo Forge has never been able to sell an evaporative cooler to the Westinghouse, Philadelphia division, although it has never stopped trying. Our local sales representatives are continuously trying to sell to that division, without success. Our headquarters' sales people have likewise tried, without success. On August 3, 1973 we took several of our key engineers and sales people to Westinghouse in Philadelphia and gave an all-day seminar demonstrating our new evaporative cooler using Munters Fill, to which we had given the tradename "AEROFIL". There were about fifteen Westinghouse personnel there. We know positively that many Westinghouse people were convinced that our Aerofil cooler had many advantages over other types made by either Buffalo Forge or Burgess, yet, to this day we have not received an order from the Philadelphia division.

6. In our opinion, the reason we have not been able to obtain orders is because the key person in the Philadelphia division is a man named Richard Audette. He was formerly employed by Burgess, and has maintained a very close personal relationship with the Burgess people. Now that more and more public utility customers have been convinced that Munters Fill coolers are better in many locations than other types, and

the Westinghouse Pittsburgh division has bought some from Buffalo Forge, Audette is ready to purchase them -- but not from Buffalo Forge. This is why I just cannot see how Burgess' good will can be injured in its relationship with Audette and his Philadelphia division. Burgess might lose sales-yes-but not good will.

7. Now I turn to General Electric. Here, it is Buffalo Forge which has been the preferred supplier. We know as a fact that for years Burgess has tried to sell evaporative coolers to General Electric, and has consistently offered comparable units, competitive from a technical standpoint, and usually at a lower price. We firmly believe that General Electric has preferred to buy our coolers and pay a premium price because they are of a higher quality, better engineered, and because Buffalo Forge gives better, more dependable service. Even though we obtained a higher price, our prices had to be fair and reasonable, as Burgess was always standing by ready to take the business at a lower price.

8. Burgess has claimed its good will will be irreparably injured if it is unable to fill the orders now on the books to supply two evaporative coolers to General Electric. The fact is, and Burgess cannot dispute this, the only reason Burgess received this order is that the Buffalo Forge plant has been on strike for several months, and General Electric desired to protect itself in order to avoid delays in installing the complete gas turbine unit. Buffalo Forge has now made arrangements to have coolers made for General Electric by sub-contractors, so it is unlikely that Burgess will receive any more orders from General Electric. There would be no possible loss of good will by Burgess if it did not receive Munters Fill to fill

these General Electric orders. General Electric knows all about the patent license, and its attitude toward Burgess would not be affected in any way if Burgess did not complete the orders.

9. The evaporative coolers Buffalo Forge has sold to Westinghouse have been purchased by an intermediary, the Farr Company. Evaporative coolers are utilized with only about five (5) to ten (10) percent of the gas turbines made in this country. Most gas turbines require "silencers" and many require "filters". Farr makes silencers and filters. A practice followed by Farr, Burgess, and other manufacturers (but not Buffalo Forge) is to try to sell a "package" of equipment which includes an evaporative cooler, a filter, a filter house, and a silencer. Since Farr does not make coolers, it purchased them from others, such as Buffalo Forge and Burgess at O.E.M. prices. On September 1, 1972 representatives of Farr and the Westinghouse Pittsburgh division visited the Buffalo Forge plant and were given a demonstration and description of the new Aerofil cooler using Munters Fill. On April 27, 1973 we gave another tour of our Buffalo plant and demonstration to the Westinghouse Pittsburgh division. On September 14, 1973 we gave a seminar to the Westinghouse and Farr representatives in Los Angeles. Buffalo Forge succeeded in convincing Farr that our Aerofil cooler had advantages, and should be included in Farr's package. It is important to note that Farr and Burgess are competitors in the sale of packages including coolers, yet as a business matter Farr was willing to buy evaporative coolers using Munters Fill from Burgess for Westinghouse. It is impossible to conceive of any loss of good will to Burgess if it is unable to sell to Farr coolers containing Munters Fill.

10. All of the customers from which Burgess has taken orders to supply coolers with Munters Fill know about the patent license. In all the seminars and demonstrations, the General Electric, Westinghouse and Farr people have asked Buffalo Forge about its relationships with the source of the new media it proposed they use, and were told the facts. Burgess knew about the license before it ever purchased any fill from Munters. Burgess has given to each customer a "hold harmless" letter to protect the customer from any possible claim which Buffalo Forge might make. There is no way Burgess' good will could be injured by failing to fill these orders, as each customer knew that Munters could not supply the fill to Burgess for that purpose. Burgess could furnish the coolers only if it could get the Munters Fill. None of these customers were assured or guaranteed that Burgess would fill the orders. Each customer knew that if Burgess did not fill the order it could go to Buffalo Forge. The good will of Burgess is not in the picture at all.

11. However, the order of this court legitimatizing Burgess' bold and brazen act of ignoring the patent license is very damaging to the good will of Buffalo Forge. We set out to make a "better mouse trap", as the expression goes among competitors, and we succeeded. In our seminars, plant tours, and sales efforts, which cost us thousands and thousands of dollars, we were asked, and answered that we had the exclusive use of this fill for a few years, so if the customers like the product, nobody could copy our "better mouse trap" for a while. Now Buffalo Forge will be injured in its reputation and good will, if any competitor is allowed to copy the "Cadillac of the industry" for which Buffalo Forge has long been known.

12. The preliminary injunction may destroy entirely the rights of Buffalo Forge under the license. We are required to make minimum purchases of Munters Fill in 1976 and 1977 in order to continue the exclusive license for two more years. Granting Burgess the right to take away our customers cuts into our sales, and therefore our volume of purchases of Munters Fill, so that we will be penalized by being forced to make penalty payments, or forfeit the exclusive license. I have been told that at the hearing on December 18, the court indicated it could try this case in March, 1976. But if a trial is a long way off, and this preliminary injunction continues during appeal, the exclusive license may come to an end, and Buffalo Forge will have lost the whole benefit of the license even if it ultimately wins the case.

13. The devastating damage to Buffalo Forge will not be easy to calculate. The first item to be considered is the investment of $128,000 described in paragraph seven of my affidavit dated December 12, 1975. When a company makes an investment in research and development it hopes at the least to recover the amount expended plus a profit to justify the risk of making the investment. By granting Burgess the right to use Munters Fill, the possibility of Buffalo Forge obtaining a fair return on its investment has been practically destroyed. The second item is the loss of profits on orders taken by Burgess. Calculating damages on this item is not difficult. It is the third item where the irreparable injury occurs. It took Buffalo Forge 2 1/2 years, from the middle of 1972 until the beginning of 1975 to convince the marketplace that its Aerofil cooler was "the better mouse trap." The preliminary injunction destroys the

momentum Buffalo Forge has developed, just as we were making progress in competing with Burgess for customers like Westinghouse. What the Court has done is to give Burgess an unlawfully monopolistic position, an advantage over Buffalo Forge, and even Farr. Since Buffalo Forge does not sell filters or silencers, and does not buy them from others to create a package, it depends upon making a quality or superior cooler. Now Burgess is "legally" allowed to copy our cooler and include it in a package, which gives Burgess a competitive advantage over both Buffalo Forge and Farr. This will cause irreparable damage to Buffalo Forge.

14. Burgess stated in the Yaeger Affidavit (page 2):

> "The total dollar volume of evaporative cooler business of gas turbine application which Burgess Industries expects to complete in calender year 1976 is approximately $1,000,000."

We have calculated that the loss of this business to Burgess will cause damage to Buffalo Forge in the amount of about $440,000. If the preliminary injunction continues into 1977, of course, our damages will be increased. The security bond of $25,000 ordered by this Court is woefully inadequate.

15. The Court concluded that if Burgess was required to cancel orders already accepted from four customers it would cause irreparable injury to its good will in the industry. It certainly does not follow that the Court should authorize Burgess to go out and take new orders away from Buffalo Forge. It cannot be argued that its good will will be irreparably damaged by not taking new orders.

Robert Jorgensen

Sworn to before me this
20th day of February, 1976.

DONALD G. McGRATH
Notary Public, State of New York
Qualified in Niagara County
Certificate filed in Erie County
My Commission Expires March 30, 1977

#1

CC Knox
4-18-73

THE MUNTERS
CORPORATION
P.O. BOX 6428
FT. MYERS, FL
33901 PHONE
(813) 936-1555
TELEX 5-2785

April 16, 1973

Mr. Hugo Bert
Burgess Industries
Air and Refrigeration Group
8101 Carpenter Freeway
Dallas, Texas 75247

Dear Mr. Bert:

Subject: Munters' HUMI-KOOL Humidifier Fill

I refer to our telephone conversation of April 9, 1973, regarding the use of our HUMI-KOOL.

Please find attached our performance charts for the HUMI-KOOL - CELdek 6560/15 evaporative cooler fill. Our standard chart shows the performance in the recommended velocity range, 600 to 800 feet per minute. In this velocity range, the fill will give a no-carry-over, no-splashing operation. No separate drift eliminator section will thus be required. The second chart shows the performance in the complete velocity range.

The standard dimensions of the fill packs are 12"D x 12"W x 48"H.

We normally recommend an arrangement for the distribution of the water as shown on an enclosed sketch. The distribution pads are made of impregnated asbestos sheets. The holes in the distribution pipes should be spaced approximately one inch apart.

Other water distribution arrangements than the ones shown can also be used.

The fill packs are installed side by side without intermediate devices. The support of the packs can be arranged in several ways. One is with angle profiles along the front and back edges. Another method, which has been used in several greenhouse installations, is shown on an enclosed sketch.

The water flow should be based on a water load of 1.5 gallons per minute per square foot of horisontal fill surface. For the standard fill depth of 12 inches in the direction of the air, this thus means 1.5 gallons per minute per lineal foot of fill.

The water collection trough should have a minimum volume of ten percent of that of the fill. A height of the trough of six inches, for a fill height of 48 inches, is recommended.

A bleed-off of the recirculating water should be arranged. A normal figure is three to six percent of the recirculating water flow. The exact value depends on the pH and the hardness of the water.

The simplest way to arrange the bleed-off is by mounting a small pan in the main water through and leading the water collected by this trough to outside the unit. The horisontal area of this pan should relate to the horisontal area of the fill as the bleed-off water flow to the recirculating water flow.

HUMI-KOOL was introduced in Europe by our Swedish parent company in 1965, and since then, more than 10,000 installations are working satisfactorily.

The fastest growing field of application in the U.S. has been for greenhouses. Present installations with the HUMI-KOOL fill for greenhouses include the Quechan Environmental Farms in Yuma, Arizona (1700 x 4 feet), The Rainbow Tomato Company in Crowley, Louisiana (1000 x 4 feet), Weatherford Farms in Stafford, Texas (620 x 4 feet), as well as several smaller installations.

Munters recently signed an agreement with Buffalo Forge Company for the exclusive use of the HUMI-KOOL fill in gas turbine air intake coolers.

The net OEM price for the fill is $5.50 per cubic foot. The water distribution pads have a net OEM price of $2.50 per square foot for the 3-inch depth and $2.00 per square foot for the two-inch depth.

Our Mr. Jan Skold, Vice President - Engineering, will be traveling your way the end of this month. He will be glad to stop by and discuss our HUMI-KOOL. As soon as his itinerary is arranged, he will call you to discuss a suitable date.

Yours very truly,

THE MUNTERS CORPORATION

Ulf E. Nordling
President

UEN/gw

Enclosures

BF-11
12-8-75
X

Ron Yaeger

Ugo Bert

Dallas

April 20, 1973

Munters Corporation

George Witte
Harvey Dutcher
E. DiBenedetto
Lee Capps
Don Masiello

In response to my telephone conversation with Munters I am enclosing their letter of April 16 which is self explanatory.

Mr. Norlling, President of Munters, indicates that they have signed an agreement with Buffalo-Forge Company for the exclusive use of their Humi-Kool fill for gas turbine air inlet coolers. It is my contention that this arrangement is illegal. The fill has been offered to us as a OEM manufacturer at $5.50 a cu. ft. I do not believe that we can be restricted from selling this fill if we incorporate it inside our cooler to the gas turbine market.

As previously outlined on my memo of April 9, if the General Electric test proves to be successful they will standardize on a Buffalo Forge Aerofil which incorporates Munter's Humi-Kool cell. If this develops and if the licensing agreement is valid we will lose approximately 45% of the inlet cooler market (General Electric's share). We will most certainly lose Turbo Power as the Farr Company in my opinion is in a position to sell whatever they manufacture to Turbo Power. At present Farr is selling the Buffalo Forge Aerofil cooler to Westinghouse, Pittsburgh, for the 501 generators. There is no question in my mind that they will attempt to offer this cooler to Westinghouse, Philadelphia, for gas turbine inlet applications. With a differential in price of approximately 30% we may not only lose the cooler business of Westinghouse but all of the related silencing work if Farr attempts to package. When inlet air inertial separators are specified, we have little or no chance in obtaining this job as Farr manufactures this equipment.

As I see the marketing development, Farr is gradually holding all the aces. If this license agreement is not challenged, we will be faced with a very, very serious situation.

Mr. Jan Skold, Vice President of Engineering, will be visiting us sometime this month. I would like to suggest that we discuss this matter with him when he visits us.

UAB/nev

0130A

BF-12

THE MUNTERS
CORPORATION
P.O. BOX 6428
FT. MYERS, FL
33901 PHONE
(813) 936-1555
TELEX 5-2785

June 29, 1973

Mr. Ugo A. Bert, Sales Manager
Burgess Industries
Environmental Group
8101 Carpenter Freeway
Dallas, Texas 75247

superseded Jan 1973

Dear Mr. Bert:

Enclosed you will find our price list No. 7. This price list includes CELdek as well as ASBESdek and distribution pads.

On these prices, you have the maximum O.E.M. discount of 30%. The prices on the list are somewhat higher than previously quoted to you. If you have any outstanding quotations at the present, we will honor the old prices but ask you kindly to inform us of the volume and the name of the customer.

I would also like to take this opportunity to remind you that HUMI-KOOL cannot be applied to gas turbine applications, due to our license with Buffalo Forge.

Yours very truly,

THE MUNTERS CORPORATION

Ulf E. Nordling
President

UEN/gw

Encl: 1

AIR & REFRIGERATION CORPORATION
JUL 2 8 15 AM '73
REFERRED TO

0131

REFRIGERATION
ORPORATION
2 8 16 AH '73
ERRED TO

1-1-74

11/21/73
FOR DEPTH GREATER THAN 12" (SAY 16")
FIGURE VOLUME OF THIS 4" PACK AND PRICE AT
7.50 + 1.70 = 5.25 + .25
= 5.50/ft³ (NET

HUMI-KOOL - PRICE LIST NO. 7

Date of issue: June 21, 1973

CELDEK

Type	Flute Size	Type of Sheet	Price/cu.ft. U.S.Dollars	Net Weight Lbs/cu.ft.
XF-5CA	6560/15	Crossflow fill with 6 mil, specially treated cellulose paper. Sheets are impregnated with melamine.	6/1/74 7.50 8.20	2.4
CF-5CA	6560	Counterflow fill with 6 mil, specially treated cellulose paper. Sheets are impregnated with melamine. Alternate tips available.	7.50 8.20	2.4

ASBESDEK

Type	Flute Size	Type of Sheet	Price/cu.ft. U.S.Dollars	Net Weight Lbs/cu.ft.
XF-5AA	6560/15	Crossflow fill with 12 mil asbestos sheets, impregnated with melamine.	~~8.00~~ 8.25 9.20	3.9
CF-5AA	6560	Counterflow fill with 12 mil asbestos sheets, impregnated with melamine. Alternate tips available.	8.80 9.20 8.25	3.8

DISTRIBUTION PADS

Type	Flute Size	Description	Price/sq.ft. U.S.Dollars	Net Weight Lbs/sq.ft.
CF-6A	6590	Two-inch-thick counterflow fill for water distribution, consisting of 12 mil asbestos sheets, impregnated with melamine. Neoprene coating on both sides.	2.60 2.60	1.0
CF-6AS	6590	Two-inch-thick counterflow fill for water distribution, consisting of 12 mil asbestos sheets, impregnated with melamine. Neoprene coating on both sides. Stainless steel banding.	3.40 3.20	1.5

1-1-74

Type	Flute Size	Description	Price/sq.ft. U.S.Dollars	Net Weight Lbs/sq. ft.
CF-6B	6590	Three-inch-thick counterflow fill for water distribution, consisting of 12 mil asbestos sheets, impregnated with melamine. Neoprene coating on both sides.	3.00 3.20 3.60	1.4
CF-6BS	6590	Three-inch-thick counterflow fill for water distribution, consisting of 12 mil asbestos sheets, impregnated with melamine. Neoprene coating on both sides. Stainless steel banding.	3.60	2.2
CF-6B	6590	SAME - BUT NO S.S. BANDING	3.00	1.4

~~I~~M~~P~~O~~R~~T~~A~~N~~T: Standard pack dimensions are 12-inches width by 12-inch depth by 48-inches length. We can supply packs with a depth of 6", but there will be an additional charge of $ 25 per cubic foot.

Above prices are F.O.B. Fort Myers, Florida, packing included.

~Shipping Containers: Single wall cartons for all U.S. shipments except in full trailer lots.

~Patent Notice: Each of these products is manufactured under one or more patents issued in the U.S.A. and foreign countries. Purchase of these products carries a free patent license to sell and use same in all areas of the world except Scandinavia.

AIR & REFRIGERATION CORPORATION
JUL 2 8 15 AM '73
REFERRED TO

BF.23
12-8-75

March 25, 1974

Mr. R. J. Thompson
Purchasing Department
Burgess Industries
8101 Carpenter Freeway
Dallas, Texas 75247

Dear Mr. Thompson:

As requested we are enclosing our Price List No. 7 covering our HUMI-KOOL products. On these prices we will grant you our maximum OEM discount of 30%.

The products included on the price list are not licensed by The Munters Corporation for evaporative cooling applications for cooling air, where the cooling of the air is obtained by evaporation of moisture therein, for gas turbines having a minimum rated capacity of at least 500 Horsepower and for the equipment connected thereto.

Very truly yours,

THE MUNTERS CORPORATION

Ulf E. Nordling
President

UEN/md
Enc.

bcc: Mr. Jorgensen
Buffalo Forge

0134

EX

BF-24
12-8-75

CURTIS, MORRIS & SAFFORD, P. C.

530 FIFTH AVENUE

NEW YORK, NEW YORK 10036

HAROLD L. STUTS *
ARTHUR V. SMITH
GORDON R. LISTER
HENRY W. KOSTER, JR.
LEWIS H. ESSINGER
JOHN A. MITCHELL
DONALD R. BENTZ
ALVIN SINDERBRAND
LEE C. ROBINSON, JR.
GREGORY N. NEFF
A. THOMAS S. SAFFORD
GARO A. PARTOYAN
FRED A. KEIPE
BARRY EVANS
LEONARD J. SANTISI
PERRY CARVELLAS
DONALD P. GILLETTE
PASQUALE A. RAZZANO
WILLIAM S. FROMMER

* MEMBER D. C. BAR ONLY

TRUMAN S. SAFFORD
OF COUNSEL

EDWARD G. CURTIS
(1888-1970)

DANIEL L. MORRIS
(1893-1980)

TELEPHONE
(212) MU 2-7171

CABLE ADDRESS
CUMOSA

TELEX
222317
CUMS

19-53F

June 7, 1974

Air Mail

George Fazakerly, Esq.
Vial, Hamilton, Koch
Tubb, Knox & Stradley
1500 Republic Bank Tower
Dallas, Texas 75201

Re: Burgess - Munters - Buffalo Forge
Our File 31039

Dear George:

Confirming our telephone conversation on June 6, 1974, I wish to advise you that Munters Corporation has granted an exclusive license under certain patents to Buffalo Forge Company to use "Munters' Fill" in evaporative cooling applications for cooling air, where the cooling of the intake air is obtained by evaporation of moisture therein, for gas turbines having a minimum rated capacity of at least 500 Horsepower and for the equipment connected thereto. Accordingly, any "Munters' Fill" sold to Burgess is not licensed for this purpose.

If you have any questions, please do not hesitate to contact us.

Sincerely,

John A. Mitchell

JAM:mm
cc: Mr. Ulf Nordling
bc: Donald McGrath, Esq.

0135

EX 1

BF-25
12-8-75
ht

THE MUNTERS
CORPORATION
P.O. BOX 6428
FT. MYERS, FL
33901 PHONE
(813) 936-1555
TELEX 5-2785

December 13, 1974

Mr. R. J. Thompson
Purchasing Department
Burgess Industries
8101 Carpenter Freeway
Dallas, Texas 75247

Re: Munters CELdek - ASBESdek Fill

Dear Mr. Thompson:

On March 25, 1974 I wrote to you and advised you that products included on the price list of Munters Corporation for evaporative cooling applications were not licensed for use by Burgess where the cooling of the air is obtained by evaporation of moisture therein, for gas turbines having a minimum rated capacity of at least 500 Horsepower and for the equipment connected thereto. By a letter of June 7, 1974 to one of Burgess' attorneys, George Fazakerly, of the firm of Vial, Hamilton, Koch, Tubb, Knox & Stradley, our attorney John A. Mitchell advised Mr. Fazakerly that Buffalo Forge Company had been exclusively licensed to use Munters' Fill in this particular Product Use Area. Mr. Fazakerly was further advised that any Munters' Fill sold to Burgess was not licensed for this purpose.

We have now been advised by Buffalo Forge that Farr Company has advised its officer, Charles W. Lockhart, that Burgess Industries has held Farr harmless against any use by Burgess of Munters' CELdek or ASBESdek Fill in a proposed Tristates project. In order to comply with the request of its exclusive licensee, Buffalo Forge, that Munters not knowingly sell Munters' Fill to purchasers whose intended use would fall within the area exclusively licensed to Buffalo Forge, it will be required that on all purchase orders hereafter submitted by Burgess to Munters the following statement be included:

0136

EV 4/

"The Munters' Fill product covered by this purchase order will not be used by Burgess Industries for evaporative cooling applications for cooling air, where the cooling of the air is obtained by evaporation of moisture therein, for gas turbines having a minimum related capacity of at least 500 Horsepower and for the equipment connected thereto."

Your cooperation in this matter will be appreciated.

Very truly yours,

THE MUNTERS CORPORATION

Ulf E. Nordling
President

UEN/md

cc: Mr. Robert Jorgensen
Buffalo Forge Company
P. O. Box 985
Buffalo, N. Y. 14240

Mr. Donald G. McGrath
McGrath, Meyer, Lieberman & Lipp
Suite 1400 Statler Hilton Building
107 Delaware Avenue
Buffalo, New York 14202

bcc: Mr. John Mitchell
Curtis, Morris & Safford
530 Fifth Avenue
New York, New York 10036

BF-26
12-8-75
W

COPY

BURGESS INDUSTRIES

ENVIRONMENTAL GROUP

ADDRESS REPLY TO
P.O. Box 6004
Greenville, South Carolina 29606
Phone (803) 232-7649

September 4, 1975

General Electric Company
Large Gas Turbine Department
Greenville, S. C.

Re: Your Inquiry G-3136
Western Farmers
Our Proposal P-15953, Addendum: 1

Attention: Mr. H. Grover

Gentlemen:

This letter will serve to assure you that Burgess Industries will and hearby agree to indemnify and save you and your customer harmless from any loss, cost, damages incurred or alleged by any third party with respect to the use by Burgess of the Munters media, cell-deck or asbest-deck.

Further information concerning the legal aspects of our dispute with Munters/Buffalo Forge can be obtained from our general Counsel, George Fazackerly, of Vail, Hamilton, Koch, Tubb, Knox and Stradley, in Dallas, Texas, telephone number 214-748-4541.

We trust this information will be helpful to you, and if you need any further assistance, please let us know.

Yours very truly,

BURGESS INDUSTRIES, INC.

Furman Lee Capps

Furman Lee Capps
Regional Sales Manager

cc: Mr. George Fazackerly
Mr. Ugo A. Bert
File

0138

ENGINEERING DEPT.
Air Handling Div.

December 17, 1971

Final Report and Recommendations on Project H-3068

Project Description: Munter's "Humi-Kool" Humidifier Fill Test

Purpose of the Project: To evaluate "Humi-Kool" for saturation efficiency, pressure drop and water entrainment capability

Date Started: April 1971

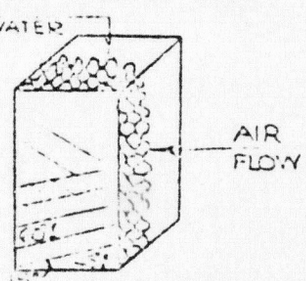
Date Completed: December 1971

A. - Introduction

Humi-Kool fill was first displayed by Munter's Corporation at the ASHRAE Show held in Philadelphia in January of this year. There, the writer met Mr. Jan Skold, the Vice President of Sales of Munter's Corporation. Subsequent follow up with Mr. Skold resulted in our ordering the fill for a test unit. The material was supplied by A. B. Carl Munters, Sweden, as it was not manufactured in the U.S.A. at that time. Recently, Munters Corporation has started manufacturing the Humi-Kool fill at Fort Meyers, Florida.

B. - Description of Fill

The Humi-Kool 6560/15 fill is made from cellulose fibers and treated with phenolic resin. Small quantities of Haeger salts are added to prevent decay. The Figure 65 stands for the flute height (6.5 millimeters), 60 stands for the angle between the flutes of two adjacent sheets. 15 is the built-in tilt angle of the sheets against the diection of the air.



C. - Principle

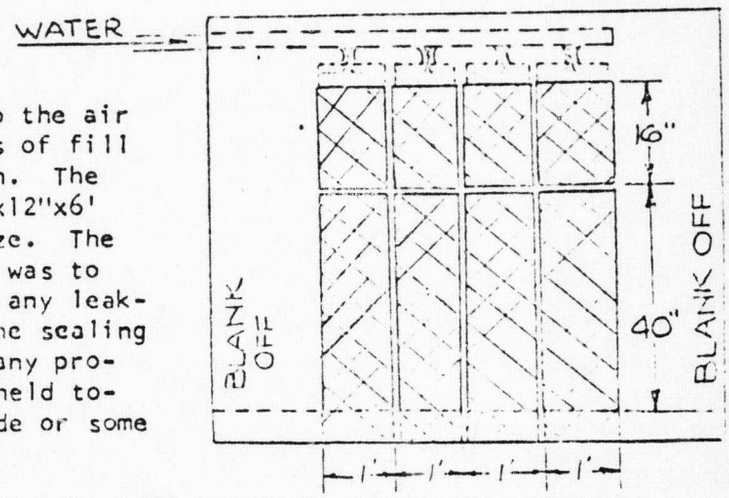
The fill causes water to spread out and flow in thin films over the fill surfaces. Such fill is often referred to as using the film flow principle or the extended surface principle. The same principle applies in the case of the SH Humidifier, the cooling being obtained by air coming in contact with the wet media. Here the fibers of the media offer the extended surface.

D. - Test Set Up

The test set up consisted of a 12" deep (in the direction of air flow) fill, housed in a 32 SH Humidifier cabinet followed by an inspection plenum with plexiglass windows to study water carry-over, a Model J, Size 95 fan section housing a 445 BLD fan, about 12 foot of discharge duct, a calibrated nozzle to measure CFM and finally the discharge damper to regulate the air flow. The plan and elevation of the test unit are shown in Figure 1. For further details, see the attached photographs on sheets 6 and 7. (Page 5)

BF-4

Notes:



1. - The area of the fill exposed to the air flow was made up of eight packs of fill material as shown in the sketch. The standard size of a pack is 12"x12"x6' which can be cut to desired size. The reason for using so many packs was to study to see if there could be any leakage problems at the joints. The sealing of the joints did not present any problem since the packs could be held together by pressure from the side or some kind of bracing.

2. - Water Loading: The horizontal area at the top of the fill (4' wide x 1' deep) was 4 sq. ft. Approximately 8 gpm of water was poured in the distribution trays at the top of the fill. This provided a water loading of 2 gpm/sq.ft. of horizontal fill area. However, reduction of water loading to 1 gpm/sq/ft horizontal fill area did not seem to affect the saturation efficiency so long as the fill was wet.

E. - Performance

The performance testing of fill consisted of establishing three important parameters viz., saturation efficiency, pressure drop across the fill, and water carry-over characteristics.

1. - Saturation Efficiency

The term saturation efficiency applies to recirculated water systems.

The test set up did not have a recirculating water pump and a tank. Instead, city water was supplied to the water distributing trays above the fill. To simulate the recirculated water system, the saturation efficiency tests were conducted at a time when the city water temperature was the same as the wet bulb temperature of the air.

2. - Water Carry-over

The "Humi-Kool" 6560/15 fill exhibited no water carry-over for air velocities up to 800 ft/min. The water carry-over was studied visually as well as by spreading dry cardboard sheets on the bottom of the inspection plenum. A slight carry-over seemed to occur at start up with a completely dry fill, but disappeared when the fill got wet.

3. - Pressure Drop

The pressure drop across the 12" deep fill was recorded with fill completely dry and when it was saturated with water. The pressure drop curves are plotted on page 8.

F. - Advantages and Applications

A new evaporative cooler or a humidifier using Munter's "Humi-Kool" fill would

have the following advantages:

1. - No water carry-over for air velocities up to 800 ft/min.
2. - Water requirements as low as 0.2 gpm per 1000 cfm of air.
3. - High saturation efficiency.
4. - No spray nozzles, hence no plugging problems.
5. - Low pressure drop.
6. - A very compact unit. The dimension of the unit, in the direction of air flow could be only two feet.
7. - Above all, because of the compact and simple design, the unit would cost much less to produce than any wet unit we make.
8. - Munter's claim that the life of the fill is about five years.

An evaporative cooler equipped with Munter's fill should prove to be very competitive for turbine intake coolers and other industrial applications requiring evaporative cooling.

G. - Disadvantages and Their Possible Solutions

1. - The present "Humi-Kool" fill is made of cellulose fibers and as such is not fireproof. It does not meet any Underwriter Laboratories rating. However, Mr. Skold of Munter's Corporation told me that they are developing the same fill using asbestos fibers. The development is expected to be complete within a year. The asbestos fill, beside having the same performance as that of "Humi-Kool" will be UL certified.
2. - Without any regard to the quantity involved, the price of the fill is $7.00 per cubic foot. This seems to be high, however, according to Mr. Skold, the price is negotiable.
3. - A slight musty odor was noticed at the start up.

H. - Analysis

1. - Buffalo Forge Company and Munters Corporation - Background

In 1963, Munters offered a different fill material for use in SH Humidifiers. The negotiations were carried out by Mr. George Meek (then President, presently Chairman of the Board) of Munters Corporation and Mssrs. Macrow, Holt and Robson of the Buffalo Forge Company. Munters' offer for an exclusive license was subsequently rejected by Mr. Macrow. For details on this subject please refer to the attached copies of correspondence by Mr. Macrow.

2. - Recommendations

It is our opinion that Munters "Humi-Kool" fill is an excellent product. As mentioned in Mr. Skold's letter of March 24, 1971, this fill was introduced in Europe in 1965 and since then, more than 10,000 installations in Europe are working satisfactorily. Munters started the production of this fill at Fort Meyers in September of this year.

In case BFCO does come out with a new evaporative cooler using "Humi-Kool" fill, because of the simplicity of its design, there is nothing preventing any other company to copy the Buffalo unit and sell it at a lower price. It might even encourage field fabrication by local outfits. This has happened before. Buffalo developed the SH Humidifier in 1960. Air and Refrigeration Company copied the design and are currently selling it at a lower price.

To safeguard Buffalo's interests, we recommend that some sort of exclusive arrangement should be worked out with Munters Corporation. To get a feel for their reaction, we mentioned it to Mr. Skold. He discussed it with Mr. Ulf Nordling, the President of Munters Corporation and informed us that Munters would be willing to consider an exclusive arrangement with BFCO regarding "Humi-Kool" fill. If required, Mr. Skold and Mr. Ulf Nordling would be happy to come down to Buffalo to discuss the matter further. Mr. Skold suggested that it will be even better if somebody from Buffalo would visit Fort Meyer, Florida, because then the Buffalo representatives would be able to see their manufacturing facility.

In case we develop an evaporative cooler utilizing Munters fill and are not able to prevent anybody else doing the same, the "Humi-Kool" may adversely effect the sales of Buffalo's other wet units namely SH Humidifier, wet glass cell type units and Aerowashers. However, it can be argued, that if we do not go ahead, somebody else will start using this fill.

Weighing all the pros and cons, we recommend that Buffalo Forge Company develop a new humidifier line using "Humi-Kool" fill.

V. N. Kapoor

VNK:vka

Attachments:

1. - Plan and Elevation of Test Set-up - Fig. 1
2. - Photographs Showing Details of Test Unit
3. - Performance Curves
4. - Comparison of Buffalo Wet Units to Evaporator Cooler using Humi-Kool
5. - Correspondence by Mr. Macrow of BFCO
6. - Letter by Mr. Skold of Munters dated March 24, 1971
7. - "Cellular Cooling Tower Fill" - Paper by George Meek of Munters, December 1967.

GENERAL INDUSTRIAL APPLICATIONS

JOB		CELL-U-PACK EVAPORATIVE COOLERS		
		QTY.	SIZE	CFM
3458	Gen. Motors Corp. Fremont, California	33	4-10	814,000
3468	3-M Company Brookings, S.D.	3	(2) 8-10 (1) 6-8	142,000
3482	American Smelting & Refining Amarillo, Texas	21	8-18	2,100,000
3504	3-M Company Guin, Alabama	4	(1 8-8 (2) 8-13 (1) 8-11	197,000 —
3506	American Smelting & Refining Amarillo, Texas	3	8-18	300,000
3507	" "	2	8-11	100,000
3524	" "	1	4-8	13,600
3526	Southwestern Pub. Svce. Amarillo, Texas	2	10-20	240,000
3533	Blue Hills Voc. School Canton, Mass.	1	4-6	16,400
3543	Tri-State Gen. Trans. Wray, Colo.	6	9-18	624,000
3544	" " "	6	9-18	624,000
3545	" " "	6	9-18	624,000
3547	Portsmouth Pub. Library Portsmouth, N.H.	1	5-10	19,250
3550	General Motors Corp. Van Nuys, Calif.	8	(1) 6½-13 (2) 6½-9½ (3) 7-14 (1) 5-10 (1) 4-10	362,000
3554	Denver Police Building Denver, Colorado	(1)	3-5	5,000
3555	Union Carbide Corp. East Hartford, Conn.	5	5-7	100,000
3561	East Detention Center Toronto, Ont.	3	4-10½	68,000

ERAL INDUSTRIAL APPLICATIONS

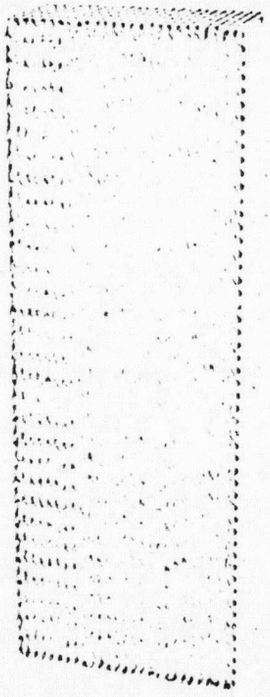
JOB		CELL-U-PACK EVAPORATIVE COOLERS		
		QTY.	SIZE	CFM
	London Detention Center London, Ont.	6	(2) 5-9 (2) 3-7 (1) 3-5 (1) 2-5	70,230
3565	Nipak, Inc. Kerens, Texas	1	5-7	20,000
3579	SUI Northern Gas (Solar) West Pakistan	9	6-8	30,000
3581	Southwestern Pub. Svc. Amarillo, Texas	2	10-20	240,000
3586	Westinghouse Elec. Retrofit Arizona (Public Serv.)	6	10-19	606,000
3587	Westinghouse Elec. Retrofit Arizona (Pub. Serv.)	6	10-19	606,000
3588	Westinghouse Elec. Retrofit Arizona (Pub. Serv.)	6	10-19	606,000
3589	Westinghouse Elec. Retrofit Arizona (Pbu. Serv.)	6	10-19	606,000
3590	Westinghouse Elec. Retrofit Arizona (Pub. Serv.)	6	10-19	606,000
3591	Westinghouse Elec. Retrofit Arizona (Pub. Serv.)	6	10-19	606,000
3592	Ortloff Corp. (Solar) Cuba, New Mexico	3	6-4	12,000
3595	NBR 52 Police Station Canada	2	6-10	34,050
3596	Mark-Hot, Inc. Montreal, Canada	2	7-10	38,000

Introducing HUMI-KOOL®

MOISTURE TRANSFER SURFACE *for INCREASED EFFICIENCY*

of Industrial Humidifiers and Evaporative Coolers

- High humidifying efficiency — up to 90% on *one foot depth.*
- High face velocity — up to 800 fpm with a pressure drop as low as 0.4 inches W.G.
- Simple water distribution — no nozzles — no clogging.
- No carry-over — no separate drift eliminators.



Contributing to the high efficiency is the same cross-fluted configuration of MUNTERS' ASBESdek, proved so effective in numerous cooling tower installations. It features a high surface-volume ratio as well as a very high mass transfer coefficient. Low operating cost due to low circulating water volume and gravity water distribution — reducing sizes of pump and water filter.

Since 1966 over 10,000 installations in Europe comprising industrial humidifiers and evaporative coolers up to 100,000 CFM as well as high efficiency humidifiers for package and central A/C units.

For further details, contact us now...

MUNTERS CORPORATION

Circle 703 on Reader Service Card

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	Sales Price		Cost of Munters Media
1) SOLAR	$10,965.00	5.9%	$646.24
2) WESTINGHOUSE	$21,445.00	36.8%	$7,724.64
3) WESTINGHOUSE	$29,965.00	25.7%	$7,724.64
4) GENERAL ELECTRIC	$68,291.00 68,291.00 $136,582.00	8.3%	$11,682.72 (for both)

5)
SOUTHERN
NATURAL GAS Co

$27,300.00 25.0% $6,818.00

Items (2) (3) & (5) are retrofit jobs which do not have enclosures, plenums, transitions pumps or electrical equipment. Existing spray-type dry-cell coolers are being gutted and Munters media installed in place of the dry-cell cells.

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reference in there to this license that -- between Buffalo Forge, and there was an awareness of this situation.

Q Well, I think we find that in this B.F. Exhibit 11, on the second page of the Munters Corporation letter to Ugo Bert, where it states, quote -- "Munters recently signed an agreement with Buffalo Forge Company for the exclusive use of the HUMI-KOOL Fill in gas turbine air intake coolers" -- unquote.

So, that from the very beginning of Burgess' discussions with Munters about using Munters' Fill in various products, Burgess had been told that it could not obtain the Fill for use in gas turbine air intake coolers; is that right?

A That's correct, sir. Usually, it took the form of a -- of a short -- in fact, that may have well been the only notice that we've ever had earlier of the existence of such a thing, as far as my knowledge.

Subsequently, later on, several years later, there was a more -- more contact on that subject.

MR. BURNS: I would like to have marked as B. F. Exhibit 12, a letter from

C-2-2

Q Yes.

A Was it -- because I don't -- my problem with that is I don't believe that is uniquely a Buffalo product. It is a Munters product, and I don't see that Buffalo had any -- anything to do with the creation of this new type of a cooler at all.

Q What is the basis for your statement?

A Because Munters has provided us with a complete system, fully engineered, ready to go, which we're now using, and all the information.

Q For use of -- in making coolers to be used with gas turbines?

A Or any kind of a cooler. Well, any kind of application, I should say.

Q I'm distinguishing, didn't Munters tell you from the very beginning, before you ordered any fill, that it would not sell you fill for use with a gas turbine, but would sell you for use with a cooler with any other application?

A It has -- as you've shown here, it has stated that quite a few times, yeah.

Q So, that when Munters showed you whatever drawings it had of how you could make a cooler using Munters' Fill, that was for use in

C-2-3

applications other than with gas turbines, wasn't it?

A No, sir, because there's no difference. The equipment is identical, regardless of what you use it for, whether it's turbine or ventilation purposes, or for a cooling tower. There -- there is no distinction that I'm aware of in the use or the material supplies, or how they're used, or any other -- any other way whatsoever.

Q Yes. But from the very beginning, when you first contacted -- when you, as Burgess, contacted Munters, you were told that Buffalo had the license to use the Fill in connection with coolers to be used with gas turbines?

A Yes, I did. Yes, we were.

Q Does Burgess have any cost studies comparing the cost of a cooler using the Munters' Fill with another type of cooler for a particular job-- any job?

A I don't know of any, sir. I can't recall of any -- any of that at any time.

Q Well, what is the basis for your statement that it costs -- that you can sell a cooler made with the Munters' Fill, that design cooler, to a customer cheaper than you can a cooler made which uses these other media?

used by Burgess during this early period to market their equipment?

A Yes.

Q From those materials, have you gained an acquaintance with the equipment that was marketed by Burgess, let's say, before 1960, at least some of it?

A I believe so. Yes.

Q All right. Based on that knowledge, did the evaporative coolers, manufactured by Burgess, employ some sort of media onto which water was sprayed or dispensed to permit air flowing through the media to contact the water?

A Yes.

Q Did it include something to hold this media in an airstream?

A Yes.

Q Did it include some means for regulating the flow of this liquid over the media?

A Yes.

Q Did it include some sort of control system for controlling the amount of water flowing over the media or the period during which the water flew -- flowed over the media?

A Yes.

Q Is there any other component that these early

9-12

systems included that you can think of?

A I'm not certain if you made reference to the pump or not, but you must have had -- there must have been a pump in all these things to recirculate the water and to -- and to spray it back into the system, yes.

end

(No omission here.)

-10-1

Q Is there any basic difference between the various components of an evaporative cooler of the type which you've provided for Tri-State, and the details of which you just mentioned, referring to Burgess Exhibit 1 and 1-A, insofar as everything except the media is concerned, and those old evaporative coolers that were manufactured by Burgess back before 1960?

A No. Basically, they all have the same components.

You have the media, you've got a pump and a -- some system of getting the water over the media, and a control valve, and electrical to turn the pump on and off, and you need a tank, and you need drain -- a drain opening to wash -- you know, clean it out, and you need a place to connect up -- to put water into the system from your city -- city water connections.

They're all -- they've all been necessary from the beginning in any kind of evaporative cooling system. The only thing that's different is that they have this Munters type media, which is -- is different than the other types of media.

Q Now, let's direct your attention to

C-'0-6

high mineral content, combined with the spray system and all the little nozzles with the artifices in it does cause a substantial maintenance problem, or if they avoid the maintenance problem by treating the water, they have a relatively high expense of treating the water.

So, it's -- it's an extra cost and probably in areas with -- with bad water, and -- if you had one located in the City of Dallas, and could run off of city water, you would never have any maintenance problems, to speak of, with the evaporative cooler.

Q So, am I correct in concluding from your testimony that the Munters' media affords both a cost advantage at the time the customer acquires the equipment, and an operating advantage if it's operating in an area where he's got water which may have minerals in it?

A Bad water, yes.

Q Now, based upon your dealings with customers for evaporative coolers, which are to be used with gas turbine installations, will they accept -- and I'm referring to the customers who have ordered equipment from Burgess -- a media other than the Munters' media in their evaporative cooler?

A I don't believe so.

Q Do you believe the customers are aware of these cost advantages, both acquisition cost advantage and maintenance cost advantage, of the Munters' media?

A Yes. Earlier, I had marked the sales price and the Munters' cost on a sheet for Mr. Burns, and on there I indicated the five customers that we had mentioned in the affidavit. Three of those items were for installations where -- which had Dynel type media coolers, and the customers were determined to remove the Dynel media and the associated piping, and were installing the Munters type media in place of it in order to gain this -- this here -- operating economies of no maintenance.

Q You prepared for counsel for Buffalo Forge an exhibit which has been identified as B. F. 34, which tabulates the sales price of equipment to be provided by Burgess to the listed customers, and the cost to Burgess of the Munters' media to be supplied with those coolers; is that correct?

A Yes, I did.

Q Was there on this tabulation of costs any indication, for example, of what the relative costs of the media supplied with the Tri-State job

C-10-8

was to the total cooler price?

A Not on this tabulation, but I do believe that was done earlier.

Q All right. Could you give me a quick estimate of the relative amount of the total purchase price?

A I think it was about ten percent.

Q All right. So, the media -- the Munters' media cost to Burgess represents approximately ten percent of the purchase price realized by Burgess from the sale of the evaporative cooler on the Tri-State job, which was a gas turbine usage?

A Yes, sir.

MR. BURNS: Off the record.

(Off the record.

. . . . . .

(Back on the record.)

Q (By Mr. Medlock) Now, is there any real question in your mind, that if you cannot acquire Munters' media for use in evaporative coolers, to be supplied to present customers of Burgess Industries, Incorporated, and prospective customers, that it will affect the business of Burgess Industries, Inc.?

A Yes, it certainly will. We indicated that there -- there is several hundred thousand

10-9

dollars in orders existing right here on this -- in this Affidavit, which would be -- if we're unable to supply it, we would have to return the orders to these customers --

And frankly, I am -- I have no idea what the customers would do if we had to take such action, plus we have other quotations to these. I think we've listed to -- General Electric is the one that comes to mind for additional business with these people.

The gas turbine industry has been an economic disaster this past year. There hasn't been any orders for anybody for anything just about. It's been a very, very difficult year, and this amount of business is not representative of that which we would like to think represents a normal business year.

We anticipate that 1976 will see more normalized activities in the gas turbine field, and that I've indicated in my Affidavit, I've -- I forecast that we could do a million dollars worth of business -- more or less, I say. That's a guess.

Q Is that assuming that you're provided with a source of supply with the Munters' media?

A Yes, sir, it is.

Q And what effect, if any, would the

10-10

unavailability of the Munters' media to Burgess Industries, INcorporated have upon its anticipated evaporative cooler business as relates to customers using those coolers for gas turbine installation?

A Well, clearly, if my expectations of a million dollars worth of orders could not be fulfilled, we would get zero orders, I believe.

Q All right. Would the unavailability of Munters' media for use in evaporative coolers to be supplied to present customers and prospective customers at Burgess Industries, Incorporated have an effect on any other line of business which Burgess regularly conducts?

A Well, we've been very active in the packaging of all the components of a system.

The gas turbine manufacturers like to think that they've standardized equipment; however, in their dealings with the -- their ultimate customers, they've learned and discovered why preferences in the area of inlet treatment, particularly -- this is the evaporative cooling and filtration supply to the gas turbine industry and to the utilities who use the equipment.

The maintenance of a large industrial gas turbine can be reduced by more efficient inlet

10-11

systems, which remove dirt and other -- other contaminants from the gas turbine, and so that there is -- there is a lot of interest, and there's a lot of specialty features about the intake system, each of which is somewhat modified to meet the local conditions of the -- the ultimate user.

For instance, Arizona is a very difficult area in the country for operating gas turbine equipment. Some other --

(Interruption; off the record.)

. . . . . .

(Back on the record.)

A (by the witness) (continuing) As I was saying, that the -- the needs of a customer in Arizona are substantially different than the ones located in New Jersey, or California, or one that's located on a -- on an ocean-side, where they would have salt contaminants coming in.

There is a lot of -- lot of specialty designs in there, and we try to be flexible to provide equipment that meets the needs of the ultimate user, and to integrate this with the silencing equipment which -- which we would quote normally for a bare bones installation --

10-1]2

And if we were limited in our ability to provide this responsiveness, as it were, to the ultimate user, we would -- we would seriously limit our ability to sell other products.

Q With some customers, have you sensed an interest in the customer in being provided with his air treating equipment for his gas turbine?

MR. BURNS: I object to the form of that.

Q (By Mr. Medlock) Have you sensed a preference in providing equipment to customers who have gas turbine installations?

MR. BURNS: I object to what he senses.

Q (By Mr. Medlock) Do you know, based on your dealings with customers with Burgess, whether or not they have a preference in obtaining equipment to treat air admitted to their gas turbines as to source of supply, as among many companies, few companies, or a single company?

A Yes. And again, the -- the way that the equipment is supplied, the locations as I mentioned before, are normally remote.

The main selling feature of a gas turbine prepackaged system is that it is -- comes in large prefabricated assemblies that are easily fitted

10-13

together in a field, and so that you have a minimum of installation costs and delay.

All of the customers are extremely conscious of the need for good fit-up of the equipment; all of them require test assembly to the greatest possible degree, and all of them have inspection programs that concentrate on the interface of sections together.

So, therefore, if there were fewer vendors to a -- of manufactured gas turbines, there would be less possible interface problems in this remote site, which is out there somewhere.

So, there is -- there is a lot of interest in one supplier putting it all together, test assembling it, match-marking the bolt hole, the inspector can come in and see it put together, and they feel good about it.

Q Now, what pieces of equipment are you talking about that these customers would like to have put together by a single vendor, if possible?

A Well, they have a duct that comes out of the turbine, and depending upon the manufacturer, this duct can come out the top, or it can come out on the side, or just wherever --

But they have an opening that's maybe

10-14

four or five feet by ten or twelve feet, with a -- with a -- with a flange around it and bolt holes in it.

That is the -- where you've got to start. You have to mate up to that with the first section, which is usually a transition.

The transition terminates with the big flange; only the transition is now much wider. It's maybe fifteen feet wide and fifteen feet high.

The next section bolts onto that, and it's -- and these just go on and on until you finish the whole assembly.

These assemblies can be very large. They can be as many as six or seven, or eight sections, all of which are very large and all of which have to be fitted together in a field without -- without problems.

Q What would be the function of some of the sections that would be placed on the inlet side of a gas turbine engine?

A Well, normally, the first device is a transition.

It is necessary to increase the cross-section area in order to reduce the velocity of the air, so that it can be effectively filtered, or cooled,

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or silenced.

The silencer can operate at the highest velocity, so that the -- after the transition the first section is normally the silencer. Beyond the silencer, we -- we have to have a much greater increase in cross-sectional areas, because filters and coolers are usually effective around five or six hundred feet per minute area of velocity --

And as I said, the silencer can operate at two or three thousand feet, or even higher, face velocity.

So, then, at this point we have to start transitioning into very large assemblies to handle this amount of air, and if there is a -- a cooler -- the cooler would normally be the next section. You would have a four-sided square, one side being the transition to the silencer; then the other three sides being -- consisting of an evaporative cooler section, and the air would be drawn in through these three coolers into this covered plenum, then into the silencer and into the turbine.

Q If there were a filter, the filter would normally be in the same unit with the evaporative cooler?

A It would be usually a design feature

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10-16

to have that filter and cooler packaged in one -- one housing, to cut down the number of pieces that you have to supply, and that's just generally what.

Q So, if I am a unit volume of air headed toward the intake of a gas turbine engine, it's possible for me to pass through a filter first, then an evaporative cooler, then a silencer, and into the entine, where I can react with the gas and cause the engine to --

A This is combustion area that you're doing. It's going into the combuster, mixed with the fuel, and exploded into -- burn, I should say, and into the power turbine which turns the generator.

Q And every time I have a junction between pieces of this equipment, whether it's between a filter and a cooler, or between the cooler and the silencer, I have a potential misfit problem until it has been pre-fitted before it gets to the site where it's to be assembled?

A That's correct. And normally, this is a major problem, simply because of the size of the units. They're -- they're always large. These evaporative cooler sections we mentioned here on this Tri-States project were twenty feet wide by twelve feet high by four or five feet, and they did

10-17

not have any filters in them. They only had just a cooler section, and there were eighteen of those required.

We've made cooler sections as long as thirty-two feet by thirteen by eight, such that they all required special trucks to move them. They're so bulky. The problem getting into the field, if you have a flange thirty-two feet long and none of the bolt holes match up, it's a major rework problem, and this is -- this has been an area of contention with all of the manufacturers of gas turbine equipment. They -- the intakes are big pieces, the exhaust silencers are big pieces, and they -- they need to be test assembled and fitted up to minimize field problems. Any time that they're not, there are problems.

Q Does Burgess Industries, Inc. supply to the gas turbine market the filter assemblies, evaporative coolers, and the silencers?

A Yes, we do.

(No omission here.)

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Q Have you supplied, to a gas turbine user, all three assemblies in the past?

A On the same project, you mean?

Q (Counsel nods head)

A Yes, we have.

Q Do you find that customers prefer, if possible, to obtain all three, assuming they're going to use all three, from the same supplier?

A Yes, they do.

Q And would it affect, in your experience, the possibility of Burgess' selling any one or more of these components if it cannot supply, for example, the evaporative cooler, having the media desired by the customer?

A Well, it would certainly limit it, our ability to do that. And if someone else were to offer a package, you know, all the components, it would place our proposal at a disadvantage.

Q Would it be to the advantage of one of your competitors, who does not supply all three components to gas turbine users, namely the filter assembly, the evaporative cooler and the silencers to prevent Burgess Industries from supplying all three?

A I would think so, yes.

Q Under questioning by counsel for Buffalo Forge, you, upon being asked: Did you continue to propose

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John G. Mitchell
Attorney for Punters

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